

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-14-90015 and 01-14-90016

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JANUARY 21, 2015

Complainant, a pro se incarcerated litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge and magistrate judge issued erroneous rulings in complainant's habeas proceeding. Complainant contends that the judge and the magistrate judge improperly determined the date by which the petitioner's responsive pleading was due and, as a result, improperly denied complainant's motion for default judgment and issued other rulings with which complainant disagreed. Complainant concludes that the judge and the magistrate judge lacked impartiality, violated complainant's Constitutional rights, engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts," and are obligated to disqualify themselves from the case.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining the recusal or removal of a judge. See 28 U.S.C. § 351, *et. seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

The misconduct complaint is not cognizable and is frivolous. The reviewed record indicates that the case had been stayed for a number of years while complainant exhausted his state court claims. Last year, the judge allowed complainant's motion to amend his habeas petition. Several months later, the judge approved the magistrate judge's recommended ruling allowing complainant's motion to forego his unexhausted claims and required respondent to file an answer within 30 days. The respondent complied with this order and also filed a motion for an extension of time in which to move for summary judgment, which the magistrate judge allowed.

Complainant argues, both in the underlying case and in the present misconduct complaint, that the court's initial order allowing complainant to amend his habeas petition reinstated the case and initiated the petitioner's obligation to file a responsive pleading within 21 days, under the Federal Rules of Civil Procedure. Complainant objects to the district judge's subsequent order in which the court denied complainant's motion for default judgment on the ground that respondent had filed a responsive pleading within the time allotted by the court. Complainant adds that, in addition to wrongfully denying complainant's motion for default judgment, the magistrate judge compounded this error.

by subsequently allowing respondent's motion for additional time in which to move for summary judgment.

Complainant provides no facts indicating that either the judge or the magistrate judge was biased or improperly motivated in issuing rulings in complainant's case. Complainant merely reiterates the contention that the court incorrectly decided the date by which the petitioner was obligated to file a responsive pleading and, as a result, wrongfully denied complainant's motion for default judgment and issued other erroneous rulings.

Complainant's disagreement with the judge's order denying complainant's motion for default judgment and with other orders issued in the case does not alone constitute cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."). As the claims that the judge and the magistrate judge lacked impartiality or engaged in any other wrongdoing are presented without any basis in fact, the misconduct complaint is also dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaint Nos. 01-14-90015 and 01-14-90016 are

dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also
Rules of Judicial-Conduct, Rules 11(c)(1)(B), and 11(c)(1)(C).

1/21/15
Date

Sandra Lynch
Chief Judge Lynch