

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-14-90022 and 01-14-90023

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MAY 7, 2015

Complainant, a pro se litigant, filed a complaint under 28 U.S.C. § 351(a), against the magistrate judge and district judge who presided over complainant's employment discrimination case. Complainant alleges that the judge and magistrate judge issued erroneous orders that resulted in the violation of complainant's rights. The misconduct complaint is not cognizable and is frivolous.

Complainant objects to two orders issued by the district judge. In the first of these orders, the judge dismissed complainant's case against both of the defendants, after a hearing on the defendants' motions to dismiss. In the second order, the court reinstated a number of complainant's claims against one of the two defendants, after complainant had filed a motion for reconsideration of the dismissal order.

Complainant asks that these two orders be reviewed for "an abuse of discretion." Complainant contends that the court's orders have violated complainant's Constitutional right to the jury trial needed to reclaim his personal property, wages and overtime pay, and personnel record from the two defendants in the case. Complainant adds that the court wrongfully disregarded the arbitrator's award and dismissed most of complainant's claims before discovery, in contravention of numerous Constitutional Amendments.

Complainant also references several emails that he had sent to the district judge and to court staff. In these emails, complainant objected to the location and scheduling of the hearing on the defendants' motions to dismiss, reargued the merits of his claims against the dismissed defendant, asserted that the rulings of the magistrate judge and the district judge were inconsistent, and requested an "impartial" judge to review his claims. Complainant concludes that he has "the right to pursue [all of his] claims in state court or before an agency," and requests that the court's two decisions be "overruled" as "an abuse of discretion, and misconduct."

The misconduct complaint is not cognizable. Complainant does not even allege, let alone provide any evidence, that either the magistrate judge or the district judge was improperly motivated in presiding over complainant's proceeding. The magistrate judge issued two procedural orders in the case. There is no indication in the misconduct complaint or in the reviewed record that the magistrate judge was improperly motivated during this limited involvement in complainant's proceeding.

There is also no evidence that the district judge harbored any illicit motivation in handling the case. In the first of the two orders to which complainant objects, the court allowed the motions to dismiss of both defendants after a hearing during which the court heard from complainant and defense counsel. In response to complainant's motion for reconsideration of the order of dismissal, filed several days after the hearing, the judge issued the second order which complainant wants "reviewed for an abuse of discretion." In this order, the court reinstated a number of complainant's claims against one of the defendants, but otherwise let its previous order of dismissal stand. The case was reopened and placed on the trial list.

The court has since taken note of the emails that complainant had sent to the court and instructed complainant to refrain from such improper communications. The judge has also ruled on several of complainant's motions to compel discovery, denied complainant's repeated requests to disqualify both the judge and the district judge, and referred the case to mediation. The mediation has been scheduled before a different magistrate judge than the one who presided in the case. In view of the district court's order reopening the case and reinstating several claims, the Court of Appeals dismissed complainant's appeal of the original order of dismissal as premature.

The judicial misconduct complaint procedure does not provide an alternative mechanism for obtaining review of the district court's orders. "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." Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A).

The complainant's disagreement with the court's orders does not alone constitute cognizable misconduct. These include the magistrate judge's procedural orders, as well as the district judge's initial order of dismissal, the order reinstating some of complainant's claims, and the orders scheduling the time and location of the hearing on the motions to dismiss. Accordingly, the complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

As there is no evidence that the judge or magistrate judge engaged in any wrongdoing, the misconduct complaint is also dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules for Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaint Nos. 01-14-90022 and 01-14-90023 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).

5/7/15

Date

Susan L. Lynch

Chief Judge Lynch