

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90017

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 1, 2012

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a magistrate judge discriminated against the complainant and engaged in misconduct in presiding over complainant's civil rights case. Complainant alleges that the magistrate judge wrongfully decided several motions and recommended the dismissal of complainant's case.

Complainant describes his underlying legal claim. He contends that the magistrate judge's rulings on several motions and recommended decision to dismiss the case were "insidiously bias, wilful, reckless, [and] malicious," reflected an abuse of the magistrate judge's authority, and constituted a violation of complainant's Constitutional rights.

The misconduct complaint is baseless and not cognizable. Complainant provides

no evidence of bias or improper judicial motive. The reviewed record of the proceeding - including the misconduct complaint, the docket, and the relevant pleadings and court orders - indicates that the magistrate judge first denied complainant's motion to proceed In Forma Pauperis (IFP) because it was incomplete. The court did so without prejudice, explicitly instructed the complainant on how to correct the application's deficiencies, and notified complainant that the case would be dismissed if a corrected application and an amended complaint were not filed by a specific date.

While complainant filed an amended complaint, the record indicates that he failed to file a corrected IFP application in accordance with the magistrate judge's specific instructions. Accordingly, on this ground, the magistrate judge recommended dismissal of the application with prejudice and the dismissal of the case.¹

Complainant's claims of bias, discrimination, and other judicial wrongdoing are offered without any basis in fact. Therefore, the misconduct complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

Where, as here, there is no evidence of improper judicial motivation, the complainant's claims disputing the substance of the court's orders are not cognizable under the judicial misconduct statute. See Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the

¹Although not necessary to the resolution of the misconduct matter, I note that both the presiding district judge and the First Circuit Court of Appeals have affirmed this decision.

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

For the reasons stated, Complaint No. 01-12-90017 is 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).

10/1/12

Date

Sandra L. Lynch

Chief Judge Lynch