

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90004

BEFORE

Torruella, Boudin and Howard, Circuit Judges,
Saris and Woodcock, District Judges

ORDER

ENTERED: JANUARY 25, 2010

Petitioner, a litigant, has filed a petition for review of Chief Judge Lynch's order dismissing her complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a magistrate judge in the First Circuit. The petitioner alleged wrongdoing in connection with her civil proceeding.

The petitioner originally alleged that, in presiding over the proceeding, the magistrate judge exhibited bias, unreasonably delayed in issuing rulings, and issued erroneous orders, including an allegedly illegal order authorizing the release of certain of the petitioner's personal identifying information. The petitioner first contended that the magistrate judge exhibited "partiality for the defendant or defense in this matter" by improperly asserting subject matter jurisdiction over the case, falsely defining one of the petitioner's motions (as a "motion to withdraw" her other motions), and improperly delaying in ruling on this motion and on a motion for recusal. With regard to the alleged delay, the petitioner asserted that the magistrate judge

improperly held the petitioner's motions "for over 10 months," and only ruled on them when she learned that the petitioner was planning to "be out of town for a few months."

As to the alleged disclosure of the petitioner's personal information, the petitioner stated that, at the request of defense counsel, the magistrate judge wrongfully issued an order to a federal agency for the petitioner's "personal confidential information that was and still is none of her business."¹ The petitioner explained that, after she contacted the Circuit Executive's Office about this issue, the magistrate judge entered an order stating that the clerk had sealed the docket entries containing the personal information.

The petitioner also included a number of allegations of wrongdoing by defense counsel, as well as clerical error or malfeasance. She charged that the docket sheet of her case was improperly altered and attached several "original" dockets, as apparent evidence of the court's tampering. The petitioner contended that a "Reconsideration Motion," filed with the court "disappeared" and added that, of the three similar motions she filed, only one was docketed. Finally, the petitioner stated that she has "never received copies of [the magistrate judge's] rulings"

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the complaint, its exhibits, the docket, as well as the pleadings and orders entered in the case, provided no evidence of judicial bias. The case, originally filed in state court, was removed by the defendant and, with the consent of the parties, was reassigned to the magistrate judge. The defendant filed a motion for summary judgment, which the court denied.

Chief Judge Lynch observed that the magistrate judge thereafter held several status

¹The petitioner stated that the availability of this information of the public docket resulted in credit theft.

conferences, and ruled on additional discovery motions and other pretrial matters before holding a four-day jury trial. After jury returned a verdict for the petitioner, the petitioner filed a motion for a new trial (contending that the damages were inadequate and that defense counsel had acted improperly), and the petitioner's attorney simultaneously moved to withdraw. Thereafter, the petitioner filed a number of motions pro se on which the court heard oral argument, including a motion for recusal raising a number of the same issues raised in the present matter.

The Chief Judge further noted that the magistrate judge issued a lengthy order denying the petitioner's motion for a new trial. The order reviewed the case in detail, including the court's basis for jurisdiction, before concluding that a new trial was not warranted under federal law. The court also denied the petitioner's other motions, including the motion for recusal. The petitioner, thereafter, continued to raise the same claims concerning jurisdiction and damages by means of additional pro se motions, which the court denied, reiterating in detail its grounds for jurisdiction.

Chief Judge Lynch determined that the reviewed material was devoid of any facts corroborating the petitioner's claims of bias or partiality for the defense. The court's orders reflected the magistrate judge's thoughtful analysis of the facts and legal issues, and the petitioner provided no evidence to the contrary. Accordingly, these charges were dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C).

The Chief Judge next explained that the petitioner's related claims -- that the court improperly defined one of the petitioner's motions (as a motion to withdraw), and improperly dismissed the motion for recusal -- were equally without merit. Where, as here, there was no

evidence of bias, charges that "call into question the correctness of a judge's ruling, including a failure to recuse, without more, [are] merits-related." Rules of Judicial Misconduct, Rule 3(h)(3)(A). Thus, the claims that the magistrate judge improperly defined a motion and improperly dismissed the recusal motion were dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Chief Judge Lynch applied the same reasoning to the charge of delay. The record established the magistrate judge's regular and thorough attention to the case, by means of numerous hearings, thorough and timely rulings, and a jury trial in which the petitioner prevailed. In this context, the pendency of one or more of the petitioner's numerous pro se motions for a number of months did not indicate improper motive, or the type of habitual, or egregious delay that might rise to the level of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 3(h)(3)(B).

As to the allegations concerning the release of the petitioner's personal information, Chief Judge Lynch observed that the petitioner's social security number and birth date were attached to a motion filed by the defendant. This motion requested a court order for the production of the petitioner's records on the ground that they contained information relevant to the damages sought in the case. Neither the petitioner nor her attorney filed an opposition to this motion and the court allowed it on that ground.

Later that month, the defendant filed another motion to compel the petitioner to execute a release form because the agency would not produce the requested documents without the petitioner's consent. The petitioner, through counsel, promptly filed an opposition to this motion which contained, as an exhibit, the same consent form (containing the petitioner's birth date and

social security number) that had been affixed to the defendant's earlier motion. Thus, the petitioner herself put the information on the public record. After a hearing, the magistrate judge allowed this motion.

Chief Judge Lynch further noted that the petitioner took no further action with regard to this issue for approximately 10 months until she filed, pro se, two motions to redact. The petitioner contended, in these motions, that her personal information (and that of her granddaughter) was "maliciously" placed in the public docket "without her knowledge," and in violation of federal law. The motions did not identify where in the record this information was placed. The court denied these motions, explaining that the petitioner had not provided the location or content of the private data and, as a result, had failed to "overcome the presumed right of public access to the material" The magistrate judge further explained that, if the petitioner "wishes to place sensitive or personal information under seal, she may file a motion identifying the material in the ECF system" The petitioner failed to file the indicated motion, instead submitting a letter to the chief district judge reiterating her complaint about the disclosure of personal information, as well as her claims concerning jurisdiction and attorney misconduct.

Several months later, the petitioner telephoned the Circuit Executive's Office concerning the availability of her personal identifying information on the public docket. Staff contacted the magistrate judge who promptly issued a procedural order sealing the two relevant docket entries, and explicitly explaining the procedure, under the applicable local rule, for requesting the redaction of personal information from the record.

Chief Judge Lynch determined that this issue was not one of actionable misconduct. The

court policy, as effectuated in its local rule and explained by the court in both of its relevant orders, is that parties should refrain from filing personally identifying data on the public docket, unless redacted or filed under seal. Pursuant to local rule, the "responsibility for redacting these personal identifiers rests solely with counsel and the parties," not with the clerk or with the judge. The petitioner did not file an opposition to the initial motion containing the data, her counsel apparently filed the same document in a subsequent pleading, and the petitioner at no time filed a proper motion to redact the information.

Chief Judge Lynch concluded that the petitioner failed to use the procedures available to her to protect the privacy of her information. When the court advised the petitioner what procedure to follow, she failed to do so. In the end, when court staff brought the issue to the attention of the magistrate judge, the court immediately ordered the relevant documents sealed. Accordingly, the allegation arising from the public availability of the petitioner's personal information was dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

Finally, the Chief Judge explained that allegations of wrongdoing by defense counsel, as well as clerical errors -- including both docketing and those involving the distribution of the court's orders -- are not attributable to the presiding judge. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A). See also Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005. The Chief Judge noted that, while it was not clear that clerical errors occurred, every effort had been made by clerk's office staff to address the petitioner's concerns in this regard..

In the petition for review, the petitioner reiterates the charge that the trial was held

without jurisdiction. The petitioner next states that, when she signed the authorization for the release of her personal data, she had assumed that it would be kept by her attorney and not shared with the opposing party. The petitioner asserts that defense counsel "lied to the court" in his motions for production of the petitioner's personal data, and includes an excerpt from the transcript of the petitioner's deposition by defense counsel allegedly demonstrating that defense counsel had no legitimate grounds on which to base his subsequent motions for production.

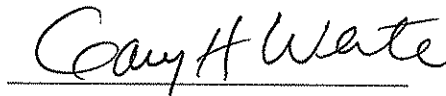
The petitioner next reiterates the allegations that the magistrate judge wrongfully denied the petitioner's motion to redact her personal information, after a delay of over 10 months, and restates the charge that the magistrate judge improperly delayed in ruling on other motions until the petitioner was out of town. The petitioner now also contends that her former counsel and defense counsel conspired to wrongfully obtain the petitioner's entire medical file without court order and submitted it to the magistrate judge. Finally, the petitioner asserts that "someone connected to this case sent [the petitioner's] medical records to [her in order] to impede [the] preparation of [her] appeal."

As it raises no issues beyond those that were thoroughly addressed by Chief Judge Lynch, the petition for review is without merit. As the Chief Judge explained, the judicial misconduct complaint process does not provide a mechanism for addressing attorney malfeasance. Moreover, there is no information in the complaint, the reviewed record of the case, or the petition for review suggesting that the magistrate judge was biased or engaged in any other wrongdoing. As observed by the Chief Judge, the magistrate judge actively presided over the case, issuing multiple lengthy rulings and presiding over a four-day jury trial at which the petitioner prevailed. The petitioner's disagreement with the court's orders --including, but not

limited to, the orders allowing the defendant's motion for production and to compel, and the orders denying the petitioner's motion for a new trial, for the judge's recusal, and to redact -- does not alone serve as grounds for a cognizable complaint of judicial misconduct. See Rules of Judicial Misconduct, Rule 3(h)(3)(A). Nor, on the present facts, does the magistrate judge's alleged delay in ruling on certain of the petitioner's motions constitute cognizable misconduct. See Id. at Rule 3(h)(3)(B). Accordingly, these charges were appropriately dismissed pursuant to See 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

As also explained by Chief Judge Lynch, the magistrate judge did not engage in any wrongdoing with regard to the alleged exposure of the petitioner's personal data. See 28 U.S.C. § 352(b)(1)(A)(i). The petitioner's final assertion -- that "someone connected to this case" interfered with the petitioner's ability to perfect her appeal -- does not even allege cognizable judicial misconduct, much less provide any evidence to support the claim. See 28 U.S.C. § 352(b)(1)(A)(iii).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-09-90004 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in cursive script, reading "Gary H. Wente", is written over a horizontal line.

Gary H. Wente, Secretary