

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90004

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 18, 2009

Complainant, a litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a magistrate judge in the First Circuit. The complainant alleges wrongdoing in connection with a personal injury action that the complainant filed in state court and the defendant removed to federal court.

The complainant presents allegations of bias, delay and erroneous rulings, as well as a related charge that the magistrate judge violated federal law and court policy by granting the defendant's motion for certain of complainant's personal identifying information, including her date of birth and social security number. The complainant first contends that the magistrate judge exhibited bias and "partiality for the defendant or defense in this matter," by improperly asserting subject matter jurisdiction over the case; improperly defined one of the complainant's motions (as a motion to withdraw); improperly delayed in ruling on motions; and failed adequately to address a motion for recusal, instead dismissing it.

With regard to the alleged disclosure of the complainant's personal information, the complainant asserts that, at the request of defense counsel, the magistrate judge wrongfully ordered the release of the complainant's personal information from a federal agency, and that this "personal confidential information . . . was and still is none of [the magistrate judge's] business."¹ The complainant adds that, after she contacted the Circuit Executive's Office about this issue early this year, the magistrate judge entered an order stating that the clerk had sealed the docket entries containing the personal information.

The complainant also includes a number of allegations of wrongdoing by defense counsel, as well as clerical error or malfeasance. She charges that the docket sheet of her case was improperly altered and attaches several "original" dockets, as apparent evidence of the court's tampering. She contends that a motion for reconsideration that she filed "disappeared," and that, of the three similar motions she filed, only one was docketed and that the date on it had been removed. Finally, the complainant states that she has "never received copies of [the magistrate judge's] rulings"

The complainant's allegations of misconduct are baseless. The complaint, its exhibits, the docket, as well as the relevant pleadings and court orders entered in the case, provide no evidence that the magistrate judge exhibited bias or partiality for the defendant. 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 subsequently filed a motion for summary judgment which the court denied.

¹The complainant states that, as a result of the breaches of security that occurred when the complainant's personal information was released, she was a victim of credit theft.

Over the following year, the magistrate judge held multiple status conferences, and ruled on discovery motions and other pretrial matters. After a four-day trial, the jury awarded the complainant damages. The complainant promptly filed a motion for a new trial (contending that the damages were inadequate and that defense counsel had acted improperly) and the complainant's attorney simultaneously moved to withdraw. The complainant, thereafter, filed multiple motions pro se, on which the court heard oral argument, including a motion for recusal in which the complainant raised a number of the same issues presented in the instant matter.

The magistrate judge issued a lengthy order denying the complainant's motion for a new trial. This order reviewed the case in detail, including the court's basis for diversity jurisdiction, before concluding that a new trial was not warranted under federal law. The complainant's other motions, including the motion for recusal, were denied as well, and the complainant subsequently filed a notice of appeal.

These materials are devoid of any facts corroborating the complainant's claims of bias or partiality for the defense. Where, as here, there is 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 for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A). The court's orders reflect the magistrate judge's thoughtful analysis of the facts and legal issues, and the complainant provides no evidence to the contrary. Accordingly, these charges are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

The complainant's related claims -- that the court improperly defined one of the complainant's

motions (as a motion to withdraw), and improperly dismissed the motion for recusal -- are equally without merit and dismissed for the same reasons. Thus, the claims that the magistrate judge improperly defined a motion and improperly dismissed the recusal motion, are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

The same holds as true of the charge of delay. The record establishes 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 complainant prevailed. In this context, the pendency of one or more of the complainant's numerous pro se motions for a number of months does 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 of the release of the complainant's personal information, the reviewed record indicates that the complainant'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 complainant's records on the ground that they contained information relevant to the damages sought in the case. Neither the complainant nor her attorney filed an opposition to this motion and the court allowed it on that ground. The complainant did not move to seal the social security number or birth date.

Later that month, the defendant filed another motion to compel the complainant to execute a release form because the agency would not produce the requested documents without the complainant's consent. The complainant, through counsel, promptly filed an opposition to this

motion which contained, as an exhibit, the same consent form (containing the complainant's birth date and social security number) that had been affixed to the defendant's earlier motion. Thus, the complainant herself put the information on the public record. After a hearing, the magistrate judge allowed this motion

The complainant took no further action with regard to this issue for approximately 10 months until she filed, pro se, two motions to redact. The complainant 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. (There is no indication in the complaint or elsewhere in the record that the granddaughter's personal information was publicly available.)

The court denied these motions explaining that the complainant 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 complainant "wishes to place sensitive or personal information under seal, she may file a motion identifying the material in the ECF system" The complainant 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 complainant 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.

This issue is 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. The "responsibility for redacting these personal identifiers rests solely with counsel and the parties," not with the clerk or with the judge. The complainant 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 complainant at no time filed a proper motion to redact the information.

The complainant failed to use the procedures available to her to protect the privacy of her information. When the court advised the complainant 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 complainant's personal information is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

Finally, 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. Nevertheless, while it is not clear that clerical errors occurred, every effort has been made by clerk's office staff to address the complainant's concerns in this regard (including a notation on the docket that the complainant states that her motion for reconsideration had been filed with the

court several months earlier). Insofar that the complainant now states that certain docket entries have been "removed," these omissions reflect the sealing of those documents containing the personal data.

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90004 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

Date

6/19/09

Chief Judge Lynch

Sandra L. Lynch