

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90027 and 01-11-90028

BEFORE

Torruella, Lipez, Thompson, Circuit Judges
O'Toole and Besosa, District Judges

ORDER

ENTERED: MARCH 15, 2012

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against two magistrate judges in the First Circuit. The petitioner originally alleged that the magistrate judges exhibited bias in connection with petitioner's civil case against his former employer.

The petitioner alleged that the magistrate judge who first presided over the case improperly interrupted petitioner during the hearing on the defendant's motion to dismiss, by asking the petitioner questions instead of allowing him to present his argument to the court. The petitioner added that the court did not have access to the relevant state court file, and that this magistrate judge made a statement at the hearing that was omitted from the transcript

Petitioner alleged that the other magistrate judge, who took over the case, issued a report recommending the allowance of the defendant's motion to dismiss that reflected judicial bias because it "omitted facts" The petitioner asserted that this magistrate judge neglected to

consider the entirety of relevant events that precipitated petitioner's legal claims, and failed to obtain evidence under oath from petitioner and other witnesses, thereby denying petitioner his Constitutional right to a jury trial.

Chief Judge Lynch dismissed the complaint. Based on the transcript of the hearing, the Chief Judge determined that the first magistrate judge interrupted the petitioner's recitation of a prepared statement in order to inquire into the relevant facts and legal basis for petitioner's claims. Chief Judge Lynch observed that the magistrate judge explained the law to the petitioner and asked him to tell the court how the defendant had violated it. The Chief Judge also observed that the magistrate judge allowed petitioner to answer each of the court's inquiries and to present a closing statement in full and without interruption.

Chief Judge Lynch explained that this is not misconduct, but that judges are necessarily accorded discretion to question litigants, counsel, and others as needed to obtain relevant information. The Chief Judge determined that the magistrate judge's conduct at the hearing did not remotely approach the limits of his discretion, let alone impinge upon the "bounds of propriety" potentially suggestive of judicial wrongdoing or misconduct. See e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-11-90001, March 10, 2011, at 6-7, and *cases cited*. Accordingly, the allegation that the magistrate judge's conduct at the hearing constituted misconduct was dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(A).

The Chief Judge went on to observe that petitioner's allegation of bias against the other magistrate judge was based only on the petitioner's disagreement with the court's recommended

decision. Chief Judge Lynch determined that the recommended decision, like the rest of the reviewed record - including the misconduct complaint, the docket, relevant pleadings and the court's orders - provided no indication of bias or improper motive. Chief Judge Lynch further noted that a legal or factual error or omission by a court - of which there was no evidence in the present matter - is not misconduct. Accordingly, the allegation of bias against this magistrate judge was dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

Lastly, Chief Judge Lynch explained that the petitioner's remaining claims - that the court did not have access to petitioner's state court file and that the hearing transcript was inaccurate - alleged clerical errors which were both not cognizable under the judicial misconduct statute, and were unsupported by the reviewed record. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.

In the petition for review, the petitioner asserts that the Chief Judge's order of dismissal reflects the Chief Judge's bias, and erroneously "validates the reckless actions" of the magistrate judges. Petitioner reiterates the claim that the first magistrate judge treated him "in a demonstrably egregious and hostile manner," during the hearing on the defendant's motion to dismiss, and asserts that the "written transcript [of the hearing] doesn't match the recorded transcript."

The petitioner continues that the second magistrate judge engaged in improper ex parte communication, asserting that the magistrate judge (or "someone from the court") interviewed

the defendant's employee, and relied on information so obtained in the report and recommendation. The petitioner includes apparent claims of impropriety by the local police department, and concludes that the dismissal of his case denied him his constitutional right to a jury trial.

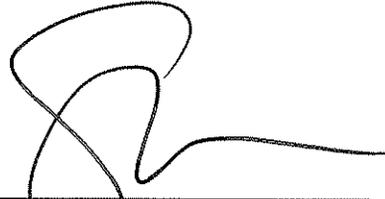
The petition for review is without merit. The petition for review, like the underlying misconduct complaint and the reviewed record of the case, provides no evidence of bias or impropriety by either of the magistrate judges. The petitioner offers no facts indicating that the transcript of the hearing on the defendant's motion to dismiss was manipulated. As the Chief Judge explained, the magistrate judge's conduct at the hearing was not remotely hostile or otherwise improper. Any such claim was properly dismissed. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.

There is likewise no evidence that the other magistrate judge engaged in improper ex parte communication, let alone relied on improperly obtained information in the report and recommendation. In the lengthy recommended decision, the magistrate judge relied exclusively on the facts as alleged in the petitioner's underlying complaint and cited to it throughout. As Chief Judge Lynch determined, the claim against this magistrate judge is based exclusively on the petitioner's disagreement with the substance of the court's ruling and, as such, is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, the Chief Judge properly concluded that any clerical errors in the transcript or otherwise - of which there is no evidence - would not constitute judicial misconduct. See 28

U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints Nos. 01-11-90027 and 01-11-90028 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

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Susan Goldberg, Acting Secretary