

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90016

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JANUARY 15, 2014

Complainant, a pro se plaintiff in a civil proceeding, filed a complaint, under 28 U.S.C. § 351(a), alleging that the presiding magistrate judge engaged in misconduct in connection with several rulings issued in the case. By consent of the parties, the magistrate judge presided over all proceedings in the matter. See 28 U.S.C. § 636(c).

The magistrate judge's ruling was appealed by the complainant to the First Circuit Court of Appeals which rejected all of complainant's claims of error. The United States Supreme Court denied certiorari. Thereafter, complainant filed this complaint against the magistrate judge. It is dismissed as without merit.

Complainant alleges that the magistrate judge failed to "exercise appropriate professional diligence in performing his duties as a federal judge, in violation of Canon

3(B) of the Code of Conduct for United States Judges." Complainant asserts that the magistrate judge's "disregard for basic judicial practices has had a prejudicial impact on [complainant's] rights" and demonstrated a "blatant disrespect for the law and the litigants in the case." Complainant adds that the magistrate judge's actions give "an appearance of impropriety" and undermine "public confidence in the integrity and impartiality of the judiciary,' in violation of Canon 2(A) of the Code of Conduct."

Complainant focuses on the issuance of two court orders - an order denying complainant's motion for leave to file an amended complaint and an order allowing the defendants' motions to dismiss the complaint. Complainant states that the dismissal order contained a critical typographical error that caused complainant to base his appeals to both the First Circuit and the United States Supreme Court on faulty information. The typographical error involved an erroneous citation to a web page defining a term which complainant contends was central to his case. As a result of this error, which complainant states he only recently discovered, the definition relied on by the court in the order of dismissal did not match the cited web page. Complainant asks that the court adopt rules prohibiting the use of the type of definition on which the court relied and then reopen his case before a different judge.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for either modifying court rules or for obtaining a different judge in a pending or closed case. See Rules for Judicial-Conduct and Judicial-

Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19. Further, a violation of the Code of Conduct for United States Judges may inform consideration of judicial misconduct complaints but a violation of the Code does not necessarily constitute judicial misconduct under the statute. See Rules of Judicial-Conduct, Commentary on Rule 3. In the present matter, a review of the record - including the misconduct complaint, the docket, and relevant pleadings and orders issued in complainant's underlying case and on appeal - suggests no violation of the Code of Conduct, let alone cognizable misconduct.

Complainant contends that the magistrate judge's reliance on a web-based definition of a term and a typographical error in the reprinting of the citation demonstrate sufficient disregard for the judge's professional obligations so as to constitute a violation not only of the canons of ethics but also of the judicial misconduct statute. However, the present facts actually amount to neither a violation of the Code nor cognizable misconduct. The record demonstrates that, in response to the defendants' motion to dismiss, the magistrate judge issued a lengthy memorandum and order in which the court thoroughly analyzed each of complainant's legal claims before determining that complainant did not present a viable cause of action.

None of the rulings to which complainant objects, either independently or taken together, are remotely indicative of improper motive or other ethical wrongdoing. In denying the complainant's motion to amend the complaint, the magistrate judge observed that the proposed amended complaint did not alter the analysis that resulted in the

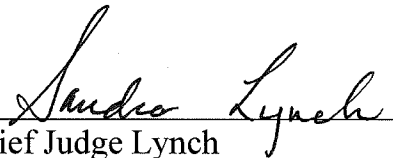
dismissal of complainant's case. The order of dismissal was upheld on appeal for substantially the same reasons as articulated by the magistrate judge. The magistrate judge denied complainant's recent motion to reopen the case because, in the court's view, it was untimely and failed to establish sufficient grounds for the relief sought.

Complainant's contention that the newly discovered typographical error would have produced a different result on appeal cannot evidence judicial misconduct. In short, the misconduct complaint is not cognizable because it does nothing more than "call . . . into question the correctness of a judge's ruling" Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, it is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Since the complainant fails to provide any evidence of misconduct or other impropriety by the magistrate judge, the misconduct complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

For the reasons stated, Complaint No. 01-13-90016 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)(D).

1/15/14
Date


Chief Judge Lynch