

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90001

BEFORE

Howard, Kayatta and Barron, Circuit Judges
Saylor and McConnell, District Judges

ORDER

ENTERED: SEPTEMBER 22, 2014

Petitioner, a pro se plaintiff in a civil proceeding, has filed a petition for review of Chief Judge Lynch's order dismissing her complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against the presiding magistrate judge.¹ The petitioner presented a wide range of alleged improprieties by the magistrate judge, including fraud, ex parte communication, conspiracy, discrimination, intimidation, harassment and violations of petitioner's Constitutional rights. As Chief Judge Lynch determined that the claims were not supported by any evidence and were refuted by the record, she dismissed the complaint.

Petitioner originally alleged that the magistrate judge issued unauthorized and improper orders, including one prohibiting the litigants from filing further pleadings in the case without court permission. Petitioner asserted that she was denied proper notice of this order, as it was handed in person to her son over a week after it was issued and not sent by mail as required.

¹ Although petitioner was initially represented by counsel, the presiding district judge promptly allowed counsel's motion to withdraw.

Petitioner further contended that the magistrate judge improperly continued to rule in the case after petitioner had filed a motion for voluntary dismissal. She asserted that the magistrate judge wrongfully ordered that petitioner and her family be denied access to the courthouse. Finally, petitioner contends that the magistrate judge and court staff wrongfully posted information about petitioner's case on public websites in order to "destroy [petitioner's] reputation."

Petitioner asked that the magistrate judge be removed from the case, that his appointment be revoked, and that a criminal investigation be conducted into the magistrate judge's conduct and that of court staff. Petitioner also requested that the clerk be prohibited from making further docket entries on the case, and that all filings and orders issued after petitioner's voluntary dismissal of the case be stricken from the record. Finally, petitioner requested that the magistrate judge and staff be ordered to refrain from posting papers associated with the case on the internet.

Chief Judge Lynch dismissed the misconduct complaint. As an initial matter, the Chief Judge observed that the allegations against petitioner's former attorney and defense counsel were not cognizable under the judicial misconduct complaint procedure. See 28 U.S.C. § 351, *et. seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4. The Chief Judge also explained that the misconduct complaint procedure does not provide an avenue for obtaining the recusal or removal of a judge, or for issuing or striking orders in a pending or closed case. See 28 U.S.C. § 351, *et. seq.*, and Rules of Judicial-Conduct, Rules 11, 19 and 20.

Chief Judge Lynch determined that the reviewed record - including the misconduct complaint, the docket, and relevant pleadings and orders - provided no support for the petitioner's

allegations against the magistrate judge. She observed that the record demonstrated that, for the roughly six months that the magistrate judge handled the case, the court patiently but unsuccessfully sought petitioner's cooperation in producing discovery necessary to litigate her claims. The Chief Judge noted that the magistrate judge held several hearings and issued multiple court orders requiring petitioner to appear for a deposition.

Chief Judge Lynch made the following additional findings, based on the record in the case. In response to petitioner's failures to comply with the court's pretrial orders regarding discovery, the magistrate judge first limited the scope of admissible evidence at trial to matters on which petitioner had produced discovery but declined to order monetary sanctions for the defendants. The petitioner, nevertheless, continued to file further motions and requests to postpone the ordered deposition. The magistrate judge invited petitioner to respond to another motion for sanctions filed by the defendants, but otherwise ruled that no additional filings would be accepted in the case until further order by the court. Several days later, petitioner filed a motion for voluntary dismissal which the presiding district judge promptly denied because a responsive pleading had been filed by the defendants. After a hearing on the defendants' second motion for sanctions, at which petitioner failed to appear, the magistrate judge issued a report and recommendation allowing the motion for sanctions and recommending that the case be dismissed with prejudice. In this proposed order, the magistrate judge recounted the lengthy history of petitioner's repeated and intentional failures to obey pre-trial orders which frustrated the defendants' ability to defend the case. The presiding district judge approved the magistrate judge's report and dismissed the case with prejudice.

Chief Judge Lynch determined that there was no evidence whatsoever that the magistrate

judge was biased against petitioner or engaged in fraud, ex parte communication, conspiracy or any other wrongdoing in connection with petitioner's case. The Chief Judge observed that the record clearly demonstrated that the magistrate judge gave petitioner multiple opportunities to provide the discovery necessary to litigate her case. The Chief Judge determined that, in violation of these orders, petitioner continued to file a multitude of voluminous pleadings seeking to continue to avoid the deposition, precipitating the order directing the parties to refrain from further filing.

The Chief Judge found no indication that the magistrate judge was improperly motivated in issuing the order restricting the parties' filings or in connection with any other order issued in the case. Chief Judge Lynch likewise found no evidence that the magistrate judge and staff improperly posted information concerning petitioner's cases or that the magistrate judge barred petitioner's access to the courthouse. Accordingly, Chief Judge Lynch dismissed the misconduct complaint, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). The Chief Judge further determined that, since there was no indication of improper judicial motivation, petitioner's objections to the magistrate judge's orders were not cognizable as a judicial misconduct complaint. 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 found that the court notified petitioner by mail of the order limiting further filings, as it did with the other orders issued in the case once petitioner became pro se. Chief Judge Lynch explained that any error by court staff or the post office in this regard, of which there was no evidence, would not suggest judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

In the petition for review, petitioner reiterates the claim of bias and the assertion that the magistrate judge improperly directed the Government Printing Office (GPO) to publish orders from petitioner's civil case on the internet. Petitioner adds that, as a result of the orders' publication, she was fired from her employment, and will "lose hundreds of thousands of dollars" Petitioner asks that her civil case be placed under seal, that orders from her case be removed from the GPO website and that the magistrate judge be criminally investigated.

Petitioner also reiterates the assertion that the magistrate judge conspired with the U.S. Marshal Service and the Clerk of Court to prevent petitioner access to the court. Petitioner contends that court staff informed the petitioner that the magistrate judge "personally instructed" the Clerk's Office staff not to accept any filings from the petitioner and not to allow the petitioner or her family into the courthouse. Petitioner adds that the actions of staff and the magistrate judge were "illegal," as the court is required to accept all filings under federal law, 18 U.S.C. § 2071.

Petitioner contends that the record in her case was tampered with and "infected with spoliation." Petitioner adds that she and her family filed papers that "later disappeared from the public [d]ocket [r]ecord" and surmises that "someone from the U.S. courthouse" delivered a box with several of petitioner's filings to her home.

Finally, petitioner asserts that Chief Judge Lynch failed to address petitioner's contentions that the magistrate judge improperly precluded petitioner from presenting evidence of her own medical condition and of her attorney's "serious mental" condition, had ex parte communications with the defense counsel, and interfered with petitioner's constitutional right to voluntarily dismiss her own case.

The petition for review, like the original misconduct complaint, provides no facts suggestive of judicial misconduct. As the Chief Judge observed, there is no evidence indicating that the magistrate judge was biased against the petitioner or that he or his staff improperly posted information concerning petitioner's case on the internet. The appearance of public orders issued in the case on a public website does not suggest otherwise.² Further, the Chief Judge appropriately determined that there was no evidence that the magistrate judge engaged in any wrongdoing, including record tampering or improper ex parte communication, in connection with petitioner's case. Accordingly the misconduct complaint was appropriately dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

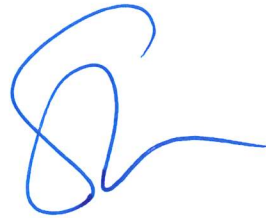
As noted by the Chief Judge, the magistrate judge directed the parties to refrain from further filing, absent leave of court, after petitioner continued to object to the taking of her deposition, despite multiple orders requiring her to do so. There is no indication that the magistrate judge was improperly motivated in issuing this or any other order in the case. Accordingly, the petitioner's disagreement with the magistrate judge's rulings issued in the case - concerning the admissibility of evidence, the denial of petitioner's motion for voluntary dismissal or any other matter - is not indicative of cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

There is also nothing in the record to indicate that the magistrate judge conspired with the U.S. Marshals or court staff to prevent petitioner or her family access to court. The record

²The record indicates that the parties had filed a confidentiality stipulation that the presiding district judge had approved and that the magistrate judge allowed some but not all of petitioner's motions to file under seal.

indicates, at the direction of the United States Marshals, petitioner and her husband were escorted by court security officers while in the building. Insofar as the magistrate judge may have instructed court staff accordingly, this is not indicative of conspiracy or other wrongdoing. 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 Complaint No. 01-14-90001 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Susan J. Goldberg, Secretary