

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90001

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: APRIL 7, 2014

Complainant, a pro se litigant in a civil case, has filed two complaints, under 28 U.S.C. § 351(a), alleging that the presiding magistrate judge engaged in misconduct in handling complainant's proceeding. Complainant presents a wide range of alleged improprieties by the magistrate judge, including fraud, ex parte communication, conspiracy, discrimination, intimidation, harassment and violations of complainant's Constitutional rights. Complainant's claims are not supported by any evidence and are refuted by the record.

Complainant alleges that the magistrate judge issued unauthorized and improper orders, including one prohibiting the litigants from filing further pleadings in the case without court permission. Complainant asserts that the magistrate judge then unfairly allowed the defendants to file pleadings despite this order, though complainant was

precluded from doing so. Complainant adds 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.

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

Complainant requests 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. Complainant also asks that the clerk be prohibited from making further docket entries on the case, and that all filings and orders issued after complainant's voluntary dismissal of the case be stricken from the record. Finally, complainant requests that the magistrate judge and staff be ordered to refrain from posting papers associated with the case on the internet.

Although complainant was initially represented by counsel, complainant's attorney withdrew shortly after the magistrate judge took over the case. As an initial matter, the complainant includes allegations against her former attorney and defense counsel which are 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. Moreover, 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.

The reviewed record - including the misconduct complaint, the docket, and relevant pleadings and orders - demonstrates that, for the roughly six months that the magistrate judge handled the case, the court patiently but unsuccessfully sought complainant's cooperation in producing discovery necessary to litigate her claims. The magistrate judge held several hearings and issued multiple court orders requiring complainant to appear for a deposition.

In response to complainant'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 complainant had produced discovery but declined to order monetary sanctions for the defendants. When complainant continued to file further motions and requests to postpone the ordered deposition, defense counsel filed another motion for sanctions. The court invited complainant to submit an opposition to this motion but otherwise ruled that no additional filings would be accepted in the case until further order by the court. Several days later, complainant 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

complainant 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. The magistrate judge recounted the lengthy history of complainant'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.

There is no evidence whatsoever that the magistrate judge was biased against complainant or engaged in fraud, ex parte communication, conspiracy or any other wrongdoing in connection with complainant's case. The record demonstrates unequivocally that the magistrate judge gave complainant multiple opportunities to provide the discovery necessary to litigate her case. When, instead of complying with the court's orders in this regard, she continued to file a multitude of voluminous pleadings seeking to continue to avoid the deposition, the court directed the parties to refrain from further filing.

Complainant, nonetheless, continued to submit pleadings without court authorization. Defense counsel sought and received court permission to respond.

There is no indication that the magistrate judge was improperly motivated in issuing the order restricting the parties' filings or in connection with any other order in complainant's case. Nor was the magistrate judge obligated to refrain from ruling on matters after complainant unsuccessfully filed for voluntary dismissal.

Complainant's claim that the magistrate judge and staff improperly posted information on any website other than complainant's docket is also not supported by any

facts. Finally, the magistrate judge did not issue any order barring complainant access to the courthouse.

As there is no evidence of bias or wrongdoing by the magistrate judge, the misconduct complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). Where, as here, there is no indication of improper judicial motivation, complainant's objections to the magistrate judge's orders are 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).

Lastly, the record indicates that the court notified complainant by mail of the order limiting further filings, as it did with the other orders issued in the case once complainant became pro se. Any error by clerk's office staff or the post office in this regard, of which there is 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).

For the reasons stated, Complaint No. 01-14-90001 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(C).

4/7/14
Date

Sanford Lynch
Chief Judge Lynch