

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINTS NOS. 01-14-90008 and 01-14-90009

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: JULY 10, 2014

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Complainant, a pro se litigant, filed a complaint against a district judge and magistrate judge in the First Circuit, alleging violations of the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a). Complainant alleges that the judge and the magistrate judge engaged in wrongdoing while presiding over complainant's civil rights case.

Complainant alleges that the district judge discriminated against complainant because of complainant's ethnicity, treated complainant in a hostile manner, inappropriately addressed complainant by her last name only, and improperly denied complainant access to electronic case filing (CM/ECF). Complainant further alleges that the judge wrongfully denied complainant's motions to proceed without prepayment of fees and, in so doing, improperly accused complainant of being dishonest. Complainant

adds that the judge failed to read and apply the statute governing complainant's case.

Complainant alleges that the magistrate judge improperly overlooked negligence and misconduct by defense counsel and improperly denied complainant's request to reschedule a settlement conference that complainant made once the conference was underway. Complainant asserts that a number of orders issued in the case reflect the "misjudgements of both judges." Complainant concludes that both the district judge and the magistrate judge violated the Americans with Disabilities Act (ADA), and requests \$20,000 in compensation.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining money damages. See 28 U.S.C. § 351, *et. seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20. Further, as the magistrate judge has since retired from service and there are no special circumstances, the misconduct complaint against the magistrate judge is dismissed as moot. See Order, Boudin, C.C.J., In Re: Judicial Misconduct Complaint No. 387, at 2 (Absent "special circumstances in which the public interest justify[es] proceeding with the complaint, . . . the retirement of a judge moots a judicial misconduct complaint because it leaves 'no effective remedy under the statute.' In re Complaint of Judicial Misconduct Complaint, 10 F.3d 99 (3rd Cir.Jud.Council 1993).").

In addition, the allegations against each of the two judges are not cognizable and, independently, are baseless. The reviewed record - including the misconduct complaints,

the docket, and relevant pleadings, transcript and orders issued in the case - provides no evidence of illicit judicial motivation or other wrongdoing by either judge.

The record indicates that, during the nine months that the case was pending, the district judge entered a number of electronic orders affirming rulings of the magistrate judge and entered an order dismissing one of the four defendants from the case on the ground that there were no facts connecting this defendant to complainant's claims. The judge also denied several of complainant's motions to proceed IFP on appeal because they were filed during a 90 day period for finalizing a settlement that had been reached in the case. Ultimately, the judge allowed the defendants' motion to dismiss because they had paid complainant the funds to which she was entitled under the settlement agreement. There are no facts indicating that the judge was biased against complainant, was hostile, addressed complainant inappropriately, or failed to exercise his judicial responsibilities. Accordingly, these allegations are dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The claims against the magistrate judge are also without merit. At complainant's request, the magistrate judge held a lengthy settlement conference that lasted almost three and one-half hours. During the conference, the magistrate judge clearly identified the parties present, which included complainant's interpreter and her case manager, and explained that the settlement conference was confidential and would not result in a decision by the court. The magistrate judge patiently facilitated the communications

between the parties, clarified complainant's claim that the defendants' actions precipitated complainant's hospitalization, and observed that, despite complainant's repeated accusations of wrongdoing by the magistrate judge, the magistrate judge has tried to adjudicate the case in a patient and courteous fashion.<sup>1</sup> The court further endeavored to explain to complainant the governing law regarding third party liens. The parties ultimately came to an agreement which the court read into the record. The court ordered the parties to complete the settlement and file a voluntary dismissal within 90 days. Complainant's claims that the magistrate judge overlooked wrongdoing by defense counsel or engaged in any other impropriety are also dismissed as lacking any factual basis. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The assertion that, during the settlement conference, the magistrate judge denied complainant's request to reschedule the proceeding is refuted by the transcript. Regardless, however, complainant's objection to any such ruling would not suggest cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

With respect to complainant's access to electronic filing, the record demonstrates that, both before and after the settlement conference, the magistrate judge and the district judge issued multiple warnings to complainant concerning her inappropriate use of

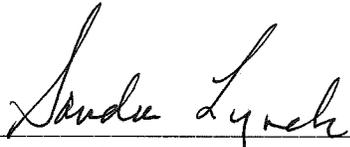
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<sup>1</sup>The same district judge and magistrate judge had also presided over a related case filed by complainant in which a settlement had been reached.

electronic filing. The magistrate judge first explained to complainant that her filings needed to be consolidated - not submitted in piecemeal fashion - and that she should not file correspondence intended for defense counsel with the court. The district judge later observed that, despite these warnings, complainant continued to file voluminous and frivolous documents electronically. Accordingly, the court suspended complainant's electronic filing privileges. As there is no evidence of improper judicial motivation, complainant's disagreement with this order is not cognizable and is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B), and Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling, . . . without more . . ."). The same holds true for the other court orders to which complainant objects, including the denial of complainant's motions to proceed IFP and the other cited rulings.

For the reasons stated, Complaints Nos. 01-14-90008 and 01-14-90009 are 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).

July 10, 2014  
Date

  
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Chief Judge Lynch