

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-18-90009

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: AUGUST 31, 2018

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Complainant, an incarcerated criminal defendant, has filed a complaint, under 28 U.S.C. § 351(a), against a magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with a criminal matter that was referred to the magistrate judge. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that, due to a conflict of interest arising from the magistrate judge's prior employment, the magistrate judge is biased in favor of the prosecution in criminal matters, and that, as a result of this bias, the magistrate judge systemically violates the rights of defendants, including complainant, by failing to issue prompt written findings following detention hearings, in contravention of federal law. Complainant asserts that the magistrate judge "insincerely" takes detention matters under advisement and, thereby, effectively denies complainants the right to appeal adverse detention orders.

Complainant further alleges that, due to conflicts of interest, the magistrate judge "never should have issued any rulings" in complainant's case. Complainant contends that the magistrate

judge had personal and professional relationships with the entities identified as victims in the criminal proceeding that required the magistrate judge to recuse sua sponte.

Complainant also alleges that the court improperly permitted extensions of the indictment deadline and improperly denied complainant's emergency motion for temporary release to allow complainant to attend a family member's memorial service. Finally, complainant alleges that the magistrate judge "breach[ed] decorum" by interrupting complainant's attorney during his closing argument at the detention hearing.

A limited inquiry, conducted pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), fails to substantiate complainant's claims that the magistrate judge was biased or otherwise engaged in misconduct. A review of the record -- including the misconduct complaint, the dockets and orders issued in the criminal case and related matters, as well as the transcripts of multiple relevant proceedings - - demonstrate that, over the course of roughly 15 months, the magistrate judge held multiple hearings and issued comprehensive rulings on all assigned matters, none of which were modified by the presiding district judge. These include, but are not limited to, orders allowing electronic surveillance of complainant and the government's request for a search warrant that were issued before complainant's arrest and indictment, as well as complainant's initial appearance and detention hearings.

At the conclusion of the detention hearing, which lasted close to two hours, the magistrate judge engaged in a colloquy with defense counsel during which the magistrate judge addressed complainant's proffered conditions of release and took the matter of detention under advisement, before remanding complainant to custody. It is presumably this interchange in

which complainant contends that the magistrate judge "breached decorum" by improperly interrupting defense counsel.

Roughly three months later, the magistrate judge issued a lengthy memorandum and order, outlining the evidence introduced at the hearing, concluding that complainant is a flight risk, particularly in light of his extensive efforts to evade arrest, and ordering him detained. Subsequently, a grand jury issued a two-count indictment against complainant, and the magistrate judge presided over complainant's arraignment, during which he pled not guilty. At one point, complainant filed an emergency motion to revoke the detention order temporarily to allow him to attend a family member's memorial service which the government opposed. Two days after complainant's motion was filed, the magistrate judge held a status conference and denied complainant's emergency motion, explaining that complainant continues to pose a flight risk.<sup>1</sup>

There is no information in any of these orders, in the complaint, or elsewhere in the reviewed record suggesting that the magistrate judge's rulings were based on any information beyond the record in the case or were otherwise improperly motivated. See, e.g., Lynch, C.C.J., Order, In Re Complaint Nos. 01-14-90007 and 01-14-90010, June 3, 2014, at 14 (citing Judicial Conference Committee on Codes of Conduct, Adv. Op. 66, June 2009) ("Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality."); see also Boudin, C.C.J., Order, In Re Complaint No. 444, January 23, 2007, at 3 ("Judges who were prosecutors or public defenders before becoming judges hear criminal cases; judges regularly preside in

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<sup>1</sup> Although not necessary to the disposition of the misconduct complaint, in denying complainant's subsequently filed motions for release from custody and for revocation of the detention order, the presiding district judge agreed that defendant constitutes a serious risk of flight under federal law.

matters that fall into fields in which the judges engaged in private practice; and there is neither any general obligation to recuse nor any presumption of prejudice that arises merely from such prior connection with the general field.").

Instead, the reviewed record demonstrates that complainant's claim that the magistrate judge was biased in favor of the prosecution is based exclusively on the magistrate judge's alleged delay in issuing a ruling following complainant's detention hearing and on complainant's disagreement with the substance of orders issued in his case. Following the lengthy detention hearing, at which the magistrate judge heard from both parties in full, the court took the matter under advisement and, roughly three months later, issued an extensive, well-reasoned order of detention. There is no evidence in the reviewed transcript of the detention hearing or elsewhere in the record to suggest that the magistrate judge "insincerely" took the matter under advisement or intentionally delayed issuing a ruling in order to subvert complainant's right to appeal the court's detention order.<sup>2</sup>

Further, the magistrate judge promptly addressed complainant's emergency motion to revoke the detention order temporarily, hearing arguments and ruling on the motion two days after it was filed. Where, as here, there is no evidence of improper motive, complainant's claim that the magistrate judge improperly delayed in ruling on complainant's detention is not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant

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<sup>2</sup> Any argument that the magistrate judge's alleged delay in issuing the detention order effectively undermined complainant's right to seek review of the detention order is belied by the fact that complainant never challenged the magistrate judge's findings or grounds for the detention order. About eight (8) months after the detention order issued, complainant filed an emergency motion for temporary revocation of the detention order (seeking permission to attend a family member's memorial service); he later filed motions for release from custody based on alleged Speedy Trial Act violations and on a motion to suppress, both of which were unsuccessful.

number of unrelated cases."); id. Commentary on Rule 3 ("A complaint of delay in a single case . . . may be said to challenge the correctness of an action of the judge -- in other words, assigning a low priority to deciding the particular case."). See also Boudin, C.C.J., In Re Judicial Misconduct Complaints No. 375 and 378, April 28, 2004, at 4 (Despite periods in litigation in which a court "could and should have been more active," including a motion for preliminary injunction that was pending for one year, the facts did not "suggest the type of extreme or repetitious delay that would suggest judicial impropriety within the meaning of the statute" or that the delay was "improperly motivated.").

Complainant likewise presents no evidence of "habitual delay in a significant number of unrelated cases." See Rules of Judicial-Conduct, Rule 3(h)(3)(B); see also Boggs, C.C.J., Order, In Re Complaint of Judicial Misconduct, No. 05-6-351-29 (Sixth Cir. November 15, 2005) (while habitual failure to decide matters in a timely fashion may be the proper subject of a complaint, a complainant must demonstrate that, over a period of years, a judge has persistently and unreasonably neglected to act on a substantial number of cases). Complainant's conclusory assertion of a "systematic abuse of the federal bail process," based exclusively on alleged conversations with unidentified defendants and their counsel, does not support a claim of misconduct. Accordingly, complainant's claims of bias and delay are dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.<sup>3</sup> See also Rules of Judicial-Conduct, Rule 11(c)(1)(E) (providing for dismissal of "allegations that are incapable of being established through investigation"); id. Commentary on

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<sup>3</sup> While complainant's allegation of delay in the magistrate judge's handling of his and other detention proceedings is not cognizable and "lack[s] sufficient evidence to raise an inference that misconduct has occurred," Rules of Judicial-Conduct, Rule 11(c)(1)(D), the limited inquiry has reaffirmed the magistrate judge's awareness of the importance of ruling expeditiously in all time-sensitive matters.

Rule 11 ("Rule 11(c)(1)(E) is intended . . . to cover situations when no evidence is offered or identified[.]").

Complainant's contention that the magistrate judge engaged in misconduct by failing to recuse from the case sua sponte is also not cognizable.<sup>4</sup> In denying complainant's motion to suppress evidence obtained by means of the search warrants authorized by the magistrate judge, the presiding district judge explicitly rejected the claim that the magistrate judge had a relationship with either victim that required recusal or that otherwise suggested a conflict of interest. A judicial misconduct complaint is not intended as an avenue through which to obtain review of a court's ruling. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). Accordingly, complainant's claim that the magistrate judge wrongfully failed to withdraw sua sponte from the proceeding is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

The same holds true for complainant's objection to other rulings and orders issued in his case, including, but not limited to, the magistrate judge's orders issuing a search warrant and denying the motion for temporary release. Insofar as the misconduct complaint is based on complainant's disagreement with the substance of these and other rulings, it is not cognizable.<sup>5</sup> See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

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<sup>4</sup> Complainant did not move for the magistrate judge's recusal.

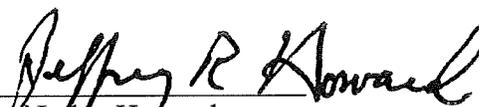
<sup>5</sup> While complainant also objects to the orders granting extensions of the indictment deadline, these were issued by a different judge, not by the magistrate judge who is the subject of the present complaint, and were upheld by the presiding district judge in denying complainant's motion to dismiss.

Finally, complainant's allegation that the magistrate judge "breach[ed] decorum" during the detention hearing is dispelled by the record. As indicated, *supra* at 2, the transcript of the relevant hearing demonstrates that the magistrate judge sought to focus defense counsel's argument on the requested conditions of release. In so doing, the magistrate judge asked relevant questions and was attentive to counsel's responses. At no time did the magistrate judge use any disparaging, hostile, or otherwise inappropriate language, let alone convey "'the sort of deep-seated unequivocal antagonism' that may constitute misconduct." See Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 6 (quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011)).

Complainant's claim that the magistrate judge "breached decorum" during the detention hearing or otherwise treated counsel in a "demonstrably egregious and hostile manner," see Rules of Judicial-Conduct, Rule 3(h)(1)(D), is conclusively refuted by the record. See 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

For the reasons stated, Complaint No. 01-18-90009 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(B) and 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B).

8/31/2018  
Date

  
Chief Judge Howard