

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-21-90011

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: AUGUST 4, 2022

Complainant, a pro se litigant, 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 two civil cases that were referred to the magistrate judge. The misconduct complaint is baseless and is not cognizable.¹

Complainant alleges that the magistrate judge "deliberately misrepresented" facts and engaged in "fraud" when making certain statements in the reports and recommendations issued in complainant's two cases. Complainant contends that the magistrate judge erroneously stated that there was an arrest warrant against complainant for civil contempt, although there was no arrest warrant or "affidavit of probable cause[,]" that complainant had been detained on civil contempt charges, although

¹ This is complainant's second misconduct complaint. In complainant's first misconduct complaint, she alleged that another judge, who presided over another case involving complainant, engaged in misconduct. See Judicial Misconduct Complaint No. 01-18-90015. Then Chief Judge Howard dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-18-90015 (March 14, 2019), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-18-90015 (January 22, 2020).

complainant "was never sued by the government," and that the defendant had purportedly engaged in misconduct when complainant was arrested and detained. Complainant adds that the magistrate judge's misstatements demonstrate that the magistrate judge was "determin[ed] to deny [complainant] a hearing on the facts[,]" "obstruct[ed] the fair administration of justice[,]" and "'spoiled' [complainant's] evidence."

Complainant further asserts that the magistrate judge engaged in "egregious" conduct, committed a "felony[,]" and failed to enforce the proper guidelines regarding the release of information to the public when the court adopted the defendant's false statement that there was an arrest warrant for complainant.² Complainant concludes that the magistrate judge "threaten[ed] the integrity and proper functioning of the judiciary, . . . deviated from routine procedure" by failing to verify the existence of complainant's criminal records, and abused the court's power.

The reviewed record, including the misconduct complaint and attachments, the dockets of the relevant proceedings, and the reports and recommendations, provides no basis for complainant's allegations that the magistrate judge was improperly motivated or otherwise engaged in misconduct.

² While complainant alleges that the magistrate judge violated the American Bar Association Model Rules of Professional Conduct, the conduct of federal judges is governed by the Code of Conduct for United States Judges. There is no indication that the magistrate judge engaged in ethical wrongdoing of any kind, let alone misconduct. See *infra* pp. 3-5.

Complainant's First Case

The record indicates that complainant filed pro se the first case, alleging that the defendant disseminated inaccurate information about complainant related to her arrests and imprisonment for civil contempt in another district court. The case was referred to the magistrate judge.

The defendant filed a motion to dismiss and supporting memorandum, indicating, in part, that complainant had been arrested based on an arrest warrant and jailed for civil contempt. The magistrate judge granted complainant's request for an extension of time to file a response, and complainant filed an opposition to the motion to dismiss, asserting, in part, that she was falsely imprisoned because the defendant's records included falsified information. The magistrate judge entered a multi-page report and recommendation, advising that the motion to dismiss be allowed for lack of standing and failure to state a claim upon which relief can be granted. The magistrate judge observed that complainant had been located and arrested pursuant to a bench warrant, citing complainant's amended complaint. The court adopted the report and recommendation and allowed the motion to dismiss.

Complainant's Second Case

The record shows that, approximately a year after filing the first case, complainant filed pro se the second case against the same defendant as in the first case, which was also referred to the magistrate judge. After the magistrate judge allowed complainant to file an amended complaint, the defendant filed a motion to dismiss and supporting

memorandum, which indicated, in part, that complainant had been jailed several times for civil contempt after violating a filing restriction that was imposed by other federal courts. After the magistrate judge granted complainant's motion for an extension of time to respond to the motion to dismiss, complainant filed a motion for summary judgment and supporting memorandum, and subsequently an opposition to the motion to dismiss.

In a multi-page report and recommendation, the magistrate judge recommended that the motion to dismiss be allowed based on complainant's failure to state a claim and res judicata. The magistrate judge cited opinions issued in cases that complainant had filed in a different federal district court establishing that complainant had been arrested and jailed for civil contempt for failure to comply with filing restrictions and providing that complainant had claimed that the defendant had engaged in purported misconduct. Complainant objected to the report and recommendation, asserting, in part, that it failed to provide that she was detained without probable cause; the court adopted the report and recommendation and dismissed the case.

Analysis

The misconduct complaint is without merit. The complaint and record fail to support complainant's conclusory allegations that the magistrate judge intentionally made misrepresentations, committed a "felony[.]" "'spoiled' [complainant's] evidence," violated applicable guidelines or procedures, or engaged in "fraud[.]" "egregious" conduct, or other wrongdoing. To the contrary, the magistrate judge cited to court records, including complainant's civil complaint and other federal court opinions, in referring to

complainant's previous arrests, detainment, and allegations of the defendant's purported misconduct.

Likewise, there are no facts in the record suggesting that the magistrate judge was "determin[ed] to deny" complainant a hearing, abused the court's power, or was otherwise improperly motivated in presiding over complainant's cases. Rather, the record indicates that the magistrate judge considered complainant's pleadings, allowed complainant's motion to file an amended complaint and multiple extensions of time to file a response to the defendant's motions, and issued lengthy, reasoned reports and recommendations based on the available record. Accordingly, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

As there is no evidence of improper judicial motive or other wrongdoing, complainant's allegations amount to nothing more than challenges to the substance of the magistrate judge's reports and recommendations, and therefore, are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling If the decision or ruling is alleged to be the result of an improper motive . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."); see also id. Commentary on Rule 4 ("Rule 4(b)(1) . . . preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a

judge's decision or procedural ruling."). Accordingly, the complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-21-90011 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).

As this is complainant's second baseless judicial misconduct complaint, complainant is warned that the filing of another baseless or repetitive complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . .").

August 4, 2022
Date



Chief Judge Barron