

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90029

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: MAY 22, 2025

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 that the judge engaged in judicial misconduct by improperly delaying civil cases against state government officials over which the magistrate judge has presided, including complainant's case. The misconduct complaint is not cognizable and unsupported.

Complaint

Complainant alleges that the magistrate judge delays in ruling on cases against "anybody in [s]tate [g]overnment." Specifically, complainant alleges that the judge has failed to administer justice effectively or expeditiously as the judge has taken no action in his civil case against a state agency and a member of its staff for over a year.

Complainant further asserts that the judge has delayed determining whether his case is meritorious or frivolous, in violation of the judge's duties under the court's local rule.

Complainant additionally asserts that, when the judge denies his motions, the orders are

issued "within a week" and state that complainant's case "is not an actual case yet."

Further, complainant states that the judge has not ruled on his motions to expedite his case, one of which includes a request to transfer the case to another judge. Complainant provides that the judge's practice of delaying cases against the state is evidenced by others, including three named alleged litigants and unnamed others.¹

Discussion

The reviewed record, including the misconduct complaint and dockets of the relevant proceedings, provides no evidence in support of complainant's claims of judicial misconduct and, thus, no basis for further inquiry.

Complainant's Proceeding

The record indicates that complainant initiated pro se a civil action with numerous other named plaintiffs against a state agency and a member of its staff, requesting to certify a class of plaintiffs. Pursuant to local rule, the matter was referred to the magistrate judge; a few months later, the magistrate judge entered a report and recommendation that the court deny the motion for class certification, as plaintiffs failed to state a cognizable claim, and, in light of their pro se status, give plaintiffs an opportunity to file an amended complaint signed by retained counsel or by each pro se plaintiff who wishes to remain in the case. Later that month, the presiding district judge

¹ Complainant seems to assert that the clerk of court engaged in misconduct by failing to respond to complainant's motion to expedite his case and assign the case to another judge. However, the governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against federal judges only. *See* 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h). Nonetheless, the record indicates that the motions were docketed in the normal course.

approved the recommended order denying class certification and, the next day, complainant filed an amended complaint, signed only by him.

Over a year later, complainant filed motions requesting discovery, which the magistrate judge, days later, denied without prejudice as premature, explaining that the amended complaint is pending preliminary review. Over the next month, complainant filed motions requesting that the case move forward and be expedited, respectively. Several months later, and after this misconduct complaint was filed, the magistrate judge entered a report and recommendation that the court dismiss all of the plaintiffs identified in the original complaint, other than complainant, as he was the only plaintiff to file an amended complaint. The magistrate judge further recommended that the court direct that the amended complaint be served and grant complainant's motions to expedite and to move the case forward, to the extent that they were satisfied by the court's rulings and otherwise deny them. The district judge approved the report and recommendation and dismissed all plaintiffs identified in the original complaint, except for complainant.²

Proceedings of the Three Named Alleged Litigants

A search of the dockets for the district court indicates that two of the individuals that complainant identified as having cases in front of the magistrate judge are not

² Subsequently, complainant filed various motions, including motions to amend the complaint, and defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. A few months after briefing on the motion to dismiss was complete, the magistrate judge entered: (1) an order granting complainant's request to file an amended complaint and taking several of complainant's pleadings together to be the second amended complaint, and thus subject to the court's preliminary review; and (2) a report and recommendation that the district court deny the motion to dismiss without prejudice, noting that defendants need not answer the second amended complaint unless ordered by the court after its preliminary review. The district judge entered an order approving the report and recommendation and denying the motion to dismiss. The case is pending.

litigants in that court. See supra p. 2. The one remaining party has had three cases in front of the magistrate judge, which are summarized below.

The First Case

Plaintiff filed pro se a complaint against a state agency and others, as well as a motion to proceed in forma pauperis, which the magistrate judge granted days after plaintiff provided the required financial affidavit. The following month, the magistrate judge entered a report and recommendation outlining plaintiff's claims and recommending that all, except one, be dismissed for failure to state a plausible claim for relief. After the magistrate judge allowed a request for an extension, plaintiff filed a timely objection, and the presiding district judge approved the report and recommendation.

On the day that defendants filed their answer to the complaint, the court scheduled a pretrial conference for the next month. The magistrate judge held the pretrial conference as scheduled, entered a discovery plan, and scheduled the trial. A number of months later, several defendants filed a timely motion for summary judgment, and plaintiff filed a motion to amend the complaint.

Approximately two months later, the magistrate judge sua sponte granted plaintiff additional time to respond to the summary judgment motion, granted his motion to amend to add parties to the complaint, and entered a report and recommendation that plaintiff's motion to amend be denied to the extent that it sought to add claims against several other parties. Less than a month after plaintiff filed a motion to reconsider the report and recommendation and an objection to the motion for summary judgment, the magistrate

judge entered an order granting, in part, the motion for reconsideration and staying the case until the court disposed of the motion for summary judgment.

Approximately two months later, the magistrate judge entered a report and recommendation that the motion for summary judgment be granted on the grounds of qualified immunity. Subsequently, the last remaining defendant filed a motion to dismiss, and plaintiff filed an objection to the motion to dismiss and a motion for reconsideration and objection to the report and recommendation. The district judge approved the report and recommendation, granted the motion for summary judgment and the motion to dismiss, denied the motion for reconsideration, and entered judgment in favor of defendant.

The Second Case

Petitioner filed a petition for writ of habeas corpus and, a number of months later, paid the filing fee. Approximately a week after the filing fee was paid, the magistrate judge entered an order, in part, instructing petitioner to file a status report on any post-conviction proceedings in state courts or the court may recommend dismissal of the petition. Days after petitioner informed the court of a state challenge to the same conviction and sentence at issue in the federal habeas proceeding, the magistrate judge directed petitioner, in part, to file a status report regarding the state proceedings and a motion to stay the petition pending the completion of the state court challenge; petitioner filed a motion to stay, and the magistrate judge granted the stay less than two weeks later.

Approximately a year and a half later, petitioner filed a motion to lift the stay and an amended petition. Less than three months later, the court entered an order taking the

motion to lift the stay under advisement, explaining that the amended petition includes unexhausted state remedies, and ordering petitioner to move either to amend the petition or continue the stay, and petitioner filed a motion to continue the stay.

The next month, the magistrate judge entered a report and recommendation that the stay be lifted and that either petitioner forego the unexhausted state claims in order for the petition to proceed or alternatively have the petition, including the state claims, subject to dismissal in its entirety without prejudice. After the court granted petitioner an extension of time to file an objection and petitioner did so, the presiding district judge entered an order granting the motion to lift the stay and approving the report and recommendation.

Over the next several months, petitioner filed a motion to dismiss the unexhausted state claims; less than a week later, the magistrate judge recommended that the court dismiss those claims and order service; and the district judge approved the recommendation. A few months later, respondent filed an answer to the petition for writ of habeas corpus and a motion for summary judgment, and petitioner filed a motion for an extension of time to respond. After the court granted the extension, petitioner filed motions for summary judgment and an objection to respondent's motion for summary judgment. Several months after petitioner's first motion for summary judgment was filed, the magistrate judge entered a report and recommendation, outlining petitioner's claims, explaining why each failed on the merits, and recommending that respondent's motion for summary judgment be granted. The district judge approved the report and recommendation and entered judgment in favor of respondent.

The Third Case

Plaintiff filed pro se a complaint against a state agency and others. After plaintiff filed motions requesting preliminary injunctive relief, the presiding district judge referred the motions to the magistrate judge, who conducted a preliminary review of the complaint and entered a report and recommendation, outlining plaintiff's claims and recommending that the court dismiss certain claims, with explanations as to why each failed, and that the court deny the motions without prejudice, as plaintiff failed to show an entitlement to preliminary injunctive relief.

Subsequently, one of the defendants filed a motion to dismiss the claim against her, and plaintiff filed multiple motions for extensions of time to file an objection to the report and recommendation and to respond to the motion to dismiss, all of which were granted. Several months after the report and recommendation was entered, plaintiff filed an objection, and, days later, the magistrate judge entered reports and recommendations that the district court dismiss certain claims and grant defendant's motion to dismiss, as plaintiff failed to state a plausible claim for relief, respectively. Plaintiff requested an extension of time to file an objection, which the magistrate judge granted less than two weeks later, and plaintiff filed the objection. The district judge entered orders approving the reports and recommendations, granting defendant's motion to dismiss, and dismissing most of the claims in the complaint.

Over the next few months, plaintiff filed motions to amend the complaint, among other motions. A number of months after the last motion was filed, the magistrate judge

entered a report and recommendation to grant, in part, and deny, in part, these motions, which the district judge approved.³

Analysis

The misconduct complaint is without merit. Complainant does not allege nor does the limited inquiry indicate that the magistrate judge was improperly motivated, in an effort to benefit state government defendants or for any other reason, in presiding over complainant's or the other litigant's cases. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) ("In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry."). Rather, the records of the relevant proceedings demonstrate that the judge considered complainant's and the other litigant's filings, and provided explanations for the court's decisions and recommendations, some of which were favorable to the moving party. See supra pp. 2-8. See Rules of Judicial-Conduct, Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive . . ."). See also Boudin, C.C.J., In Re Judicial Misconduct Complaints No. 375 and 378 (April 28, 2004), at p. 4 (Despite periods in litigation in which a court could have been more active, including a motion for preliminary injunction that was pending for one year, the facts did not, without more, "suggest the type of extreme or repetitious delay that would suggest judicial impropriety

³ Subsequently, another defendant filed a motion for summary judgment, and, after this misconduct complaint was filed and less than two weeks after briefing concluded on the motion, the magistrate judge entered a report and recommendation that the motion for summary judgment be allowed, in part, and denied, in part. The district judge entered an order approving the report and recommendation. A motion for summary judgment filed by a third defendant is pending.

within the meaning of the statute" and complainant failed to present a single fact that the delay was "improperly motivated.").

There is likewise no evidence of a "habitual delay in a significant number of unrelated cases." See Rules of Judicial-Conduct, Rule 4(b)(2) and Commentary on Rule 4 ("[A]n allegation of a habitual pattern of delay in a significant number of unrelated cases . . . is not merits-related."). Of the three other litigants that complainant alleges have had cases delayed before the magistrate judge, only one, according to a docket search, has had cases pending before the magistrate judge. The records in complainant's proceeding and three proceedings filed by the other litigant do not evidence a persistent, habitual delay in a significant number of unrelated cases that would conceivably rise to the level of misconduct; in fact, in all four of the reviewed matters, the magistrate judge promptly issued multiple rulings. See supra pp. 2-8. See also 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.). Therefore, the complaint is dismissed as not cognizable and unsupported, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and (D), and Commentary to Rule 11 ("[D]ismissal is appropriate 'when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.' 28 U.S.C. § 352(b)(1)(B).").

For the reasons stated, Complaint No. 01-23-90029 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D), respectively.

May 22, 2025

Date



Chief Judge Barron