

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90007 and 01-11-90008

BEFORE

Boudin and Howard, Circuit Judges,
Saris, Woodcock, and Laplante, District Judges

ORDER

ENTERED: OCTOBER 19, 2011

Petitioner has filed a petition for review of Chief Judge Lynch's order dismissing her complaints, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a district judge and a magistrate judge, respectively, in the First Circuit. The petitioner alleged that the district judge and the magistrate judge engaged in misconduct while presiding over the petitioner's employment discrimination proceeding.

The petitioner charged that the district judge and the magistrate judge exceeded their authority by improperly delegating matters in the case. The petitioner contended that the district judge did not properly refer the case to the magistrate judge, under 28 U.S.C. § 636, and that, as a result, the case was "without jurisdiction" before the magistrate judge, who, in turn, improperly delegated matters to a staff attorney.

The petitioner further asserted that the staff attorney assigned to work on the petitioner's case engaged in a conspiracy with defense counsel to defeat the petitioner's meritorious civil

action. The petitioner charged that the staff attorney engaged in improper ex parte communication with defense counsel. The petitioner added that the staff attorney wrongfully drafted rulings on behalf of the court, including the denial of a motion for injunctive relief.

The petitioner further alleged that the magistrate judge "put blinders on" in failing to address the staff attorney's "usurpation of power" and conspiracy with defense counsel. The petitioner stated that the magistrate judge improperly denied the petitioner's right to seek review of the magistrate judge's orders, the petitioner's motion to disqualify the district judge, and the petitioner's motion to vacate void orders. The petitioner added that the magistrate judge wrongfully ruled on a motion for contempt, in violation of 28 U.S. C. § 636(e).

Chief Judge Lynch dismissed the misconduct complaints. The Chief Judge determined that the petitioner presented no evidence of any illicit motivation on the part of the magistrate judge or the district judge. Chief Judge Lynch explained that the reviewed materials -- including the misconduct complaints, the docket, and relevant pleadings and court orders -- indicated that the district judge employed the normal procedure for referring pretrial matters in a civil case to the magistrate judge. See 28 U.S.C. § 636(b).

The Chief Judge likewise found no information indicating misconduct by the staff attorney, let alone that the magistrate judge ignored wrongdoing by the staff attorney. Chief Judge Lynch noted that, although complaints against staff are not cognizable under the judicial misconduct statute, see 28 U.S.C. § 351(a) and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4, the record was devoid of evidence in support of the petitioner's claims of conspiracy, improper ex parte communication or manipulation of the docket by the staff attorney.

Chief Judge Lynch pointed out that, in response to the petitioner's motion for injunctive relief that sought to enjoin the staff attorney from working on the petitioner's case, the judge directed the petitioner to refrain from filing pleadings that contained unwarranted personal attacks on staff and were irrelevant to the merits of the case. The Chief Judge further observed that the petitioner's inability to heed the district judge's warnings in this regard prompted the court to prohibit the petitioner from filing pleadings, absent court authorization.

Chief Judge Lynch also noted that there were two motions for contempt filed - the first by the petitioner, which the district judge referred to the magistrate judge who subsequently denied it. The defendants filed the other motion for contempt, which the magistrate judge recommended be allowed.

The Chief Judge concluded that, since the misconduct complaints were presented without any evidence of impropriety on the part of the presiding district judge or the magistrate judge, they should be 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).

Chief Judge Lynch further explained that, as there was no evidence of improper motivation, disagreement with rulings issued by the court did not constitute a cognizable 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 Chief Judge noted that any contribution by court staff to the judges' handling of the case was not indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

In the petition for review, the petitioner essentially reiterates the original claim that improper interference by court staff and the magistrate judge deprived the petitioner's case of

adequate review by the district judge.¹ The petitioner asserts that Chief Judge Lynch's order dismissing the misconduct complaint is "deficient" in multiple respects. Petitioner argues that the order "ignored" the "blatant fraud" perpetrated on the court by defense counsel (in "swapping" PDF files in ECF with the clerk's assistance), the "inappropriate usurpation of the case by the pro se staff attorney," and the absence of consent to the magistrate judge's involvement in the case. The petitioner questions the authenticity of the Chief Judge's signature on the order dismissing the misconduct complaint, and states that it improperly concluded that there was "no docket manipulation," and failed to recognize that petitioner's access to the district judge was "blocked."

The petitioner also "questions the legitimacy" of a subsequent Court of Appeals' ruling denying petitioner's request for a writ of mandamus. The petitioner contends that the Chief Judge's dismissal of the misconduct complaint disqualified the Chief Judge from participating in the court's review of the mandamus petition.

The petition for review is without merit. The petition for review, like the original complaint, offers no factual basis for the conclusion that either the judge or the magistrate judge was improperly motivated in handling the petitioner's case. The reviewed record demonstrates that the district judge referred all pretrial matters to the magistrate judge, pursuant to 28 U.S.C. § 636(b). In accordance with this order of delegation, the magistrate judge held conferences and issued a number of rulings. As to other matters, the magistrate judge submitted a report and recommendation to the district judge.

The petitioner's contention that the district judge's orders were improperly issued by staff

¹The petitioner has submitted numerous emails to the Circuit Executive's Office which are addressed concurrently.

without the judge's review or consent is likewise offered with no basis in fact. As Chief Judge Lynch observed, the assistance provided by court staff in the petitioner's case was fully consistent with court practice. Nor does the petitioner offer any evidence that the judge or magistrate judge overlooked "fraud" by defense counsel, manipulation of the docket, or that the Chief Judge's signature on the order dismissing the misconduct complaint was a "forgery." Lacking factual substantiation, the misconduct complaint was appropriately 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).

As there was no evidence of illicit judicial motivation, insofar as the misconduct complaint was based upon the petitioner's disagreement with the orders issued in the case, it was also properly 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).

Finally, although not necessary to consideration of the matter, the Chief Judge was not disqualified from consideration of the petitioner's mandamus proceeding exclusively by virtue of her review of the misconduct complaint. See e.g. Judicial Conference Committee on Codes of Conduct, Advisory Opinion No. 66.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints Nos. 01-11-90007 and 01-11-90008 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in black ink, appearing to be 'S. Goldberg', written over a horizontal line.

Susan Goldberg, Acting Secretary