

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: MAY 18, 2011

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Complainant has filed a complaint, under 28 U.S.C. § 351(a), against a district judge and a magistrate judge, respectively, in the First Circuit. The complainant alleges that the district judge and the magistrate judge engaged in misconduct while presiding over the complainant's pro se civil case both as to the procedure used and as to the rulings entered. This does not constitute a cognizable claim of misconduct.

The complainant essentially alleges that the district judge and the magistrate judge exceeded their authority by improperly delegating matters in the case. The complainant alleges that district judge did not properly refer the case to the magistrate judge, under 28 U.S.C. § 636, and that the magistrate judge, in turn, improperly delegated matters to a staff attorney.

The complainant further contends that the pro se staff attorney assigned to work on

the complainant's case engaged in a conspiracy with defense counsel to defeat the complainant's meritorious civil action. The complainant asserts that the staff attorney engaged in improper ex parte communication with defense counsel, and cites multiple docket entries as purported evidence of their collusion. The complainant adds that the staff attorney wrongfully drafted rulings on behalf of the court, including the denial of a motion for injunctive relief, and manipulated the docket to alter the date on which this order was entered.

With respect to the magistrate judge, the complainant contends that the magistrate judge "put blinders on" in failing to address the staff attorney's "usurpation of power" and conspiracy with defense counsel. The complainant states that the magistrate judge improperly denied the complainant's right to seek review of the magistrate judge's orders, the complainant's motion to disqualify the district judge, and the complainant's motion to vacate void orders. The complainant adds that the magistrate judge wrongfully ruled on a motion for contempt, in violation of 28 U.S. C. § 636(e). (At another point in the misconduct complaint, the complainant contends, based upon the qualities of the pdf document, that the contempt order was in fact drafted by the staff attorney before the magistrate judge had been referred the case.)

No cognizable complaint of misconduct is presented; the claims of bias and impropriety are baseless. The complainant presents no evidence of any illicit motivation on the part of the magistrate judge or the district judge in connection with the complainant's case. The reviewed materials -- including the misconduct complaint, the

docket, and relevant pleadings and court orders -- indicate that the district judge employed the normal procedure for referring pretrial matters in a civil case to a magistrate judge. See 28 U.S.C. § 636(b). There is likewise no information indicating any misconduct by the staff attorney much less that the magistrate judge ignored or overlooked wrongdoing by the staff attorney. 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 is equally devoid of evidence in support of the complainant's claims of conspiracy, improper ex parte communication, manipulation of the docket, or other wrongdoing by the staff attorney, and complainant offers no such evidence.

The motion for injunctive relief to which the complainant refers was filed in a different month than the complainant alleges, contained many of the claims raised in the present matter, and sought to enjoin the staff attorney from working on the complainant's case. The district judge denied the motion and directed the complainant to refrain from filing pleadings that contained unwarranted personal attacks on staff and are irrelevant to the merits of the case. The complainant's inability to heed the district judge's warnings in this regard prompted the court to prohibit the complainant from filing pleadings, absent court authorization.

With respect to the issue of contempt, the first such motion was filed by the complainant and referred by the district judge to the magistrate judge, who subsequently

denied it. The defendants also filed a motion for contempt against complainant, which the magistrate judge recommended be allowed. As the misconduct complaints are presented without a shred of evidence of impropriety on the part of the presiding district judge or the magistrate judge, they are 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).

Absent evidence of improper motivation -- of which there is none -- disagreement with rulings issued by the court (including, but not limited to, the district judge's order of referral to the magistrate judge, and the magistrate judge's orders denying the complainant's motion for contempt, the complainant's motion to disqualify, and the complainant's motion to vacate void orders) does 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).<sup>1</sup>

Finally, any contribution by court staff to the judges' handling of the case is not, on the present facts, 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).

For the reasons stated, Complaints Nos. 01-11-90007 and 01-11-90008 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B),

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<sup>1</sup>Although not necessary to the determination of this matter, I note that the magistrate judge did not, as alleged, rule on the complainant's motion to disqualify the district judge but referred it to the district judge for consideration.

and 11(c)(1)(C).

5/18/11

Date

Sandra L. Lynch

Chief Judge Lynch