

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90011

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 8, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a magistrate judge in the First Circuit. The complainant alleges that the magistrate judge engaged in misconduct while presiding over the complainant's civil case.

The magistrate judge held no hearing, reviewed the civil case on the merits, and issued a Report and Recommendation. The Report and Recommendation noted, inter alia, that complainant had been enjoined from filing any action in any federal court without first obtaining leave to file and found that complainant had failed to comply with that order.

The complainant alleges, based on the Report and Recommendation, that the magistrate judge engaged in judicial misconduct by discriminating against the

complainant, "engag[ing] in partisan political activity," treated him "in a demonstrably egregious and hostile manner," that the magistrate judge somehow independently improperly "researched" the complainant, and was biased against him, as a result of information improperly obtained as a result of this research. The complainant further contends that the magistrate judge, who held no hearing, "flew off the handle and started making irrational accusations with [sic] any factual basis to do so," and makes other complaints that the magistrate judge was incorrect.

The misconduct complaint is utterly baseless. The reviewed record - including the misconduct complaint, docket sheet, pleadings, and court orders issued in the complainant's case - provides no evidence that the magistrate judge was biased against the complainant. The magistrate judge issued a report recommending the denial of the complainant's motion for leave to file a civil complaint. The magistrate judge determined that a permanent injunction issued by another federal court prohibited the complainant from filing the present lawsuit and considered and rejected complainant's argument. The presiding district judge approved the magistrate judge's Report and Recommendation, over the complainant's objection. The allegations of bias and political activity are dismissed as frivolous. See 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)(C).

There is also no evidence that the magistrate judge improperly conducted "independent research" of the complainant. In its recommended ruling, the court did note

that public court records indicated that the complainant had filed "hundreds, if not thousands, of actions" since the issuance of the earlier injunction. There was nothing remotely improper or biased in that observation. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

The complainant's remaining allegations of hostility and unwarranted accusations are equally lacking in merit. In the Report and Recommendation, the magistrate judge questioned the authenticity of the court order that the complainant had submitted in support of his motion for leave to file the civil complaint. Neither this statement, nor other information in the misconduct complaint or in the reviewed record reflect "hostility" or constitute "irrational accusations" of the complainant. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). Questioning the authenticity of a litigant's factual submission is not misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Finally, as there is no evidence of bias, insofar as the misconduct complaint is based on the complainant's disagreement with the substance of the magistrate judge's recommended ruling, it is dismissed as not cognizable. See 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. 01-11-90011 is 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), and 11(c)(1)(C).

Complainant is warned against filing frivolous misconduct complaints. "A

complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints." Rules of Judicial-Conduct, Rule 10(a).

6/8/11

Date

Seader Lynch

Chief Judge Lynch