

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NO. 01-11-90017 and 01-11-90018

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: AUGUST 18, 2011

Complainants, pro se litigants, have filed a complaint against a district judge and a magistrate judge of the First Circuit alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a). The complainants allege that the judge and magistrate judge have engaged in misconduct while presiding over the complainants' case.

In addition to the judge and magistrate judge, complainants identify the clerk of the federal district court, defendants' counsel, state court judges and officials, and others as subjects of the misconduct complaint. Complainants' federal lawsuit alleged an unlawful taking of their property. A related state court proceeding concerned a dispute over property taxes levied on complainants' property, and resulted in the town's acquisition of the property and the issuance of an order of eviction.

Complainants allege that the judge, magistrate judge and clerk are engaged in a conspiracy with defendants, defendants' counsel, and state court officials. Complainants do

not explain the purpose of the alleged conspiracy but assert that the judge, magistrate judge and clerk have violated federal law and the Federal Rules of Civil Procedure.

Complainants further contend that the district judge allowed the appearance of one of the defendants' attorneys without proper notice. They also allege that the judge improperly denied complainants' motions to vacate all orders issued by the magistrate judge and to vacate the defendants' proposed discovery plan.

With respect to the magistrate judge, the complainants aver that the district judge's order designating the magistrate judge to preside over the case violates complainants' right to due process. They also contend that the magistrate judge improperly granted defendants' motion to extend time to file an answer.

Finally, complainants allege that clerk of the federal district court wrongfully neglected to hold one of the defendants in default. The complainants conclude that the judge, magistrate and clerk have violated their respective oath(s) of office.

The misconduct complaint provides no facts in support of the complainants' conclusory allegations that the district judge or magistrate judge have engaged in a conspiracy, violated federal law, or otherwise acted improperly. The reviewed record - including the misconduct complaint, its attachments, the federal docket, and relevant pleadings and court orders from both the federal and state court cases - offers no suggestion of improper motive on the part of the judge or the magistrate judge.

Since the case was filed, both the magistrate judge and district judge have issued a number of orders on preliminary motions. These include the orders referenced by the

complainants, and several others. Like the remainder of the record, these orders contain no suggestion of judicial impropriety.

Further, pursuant to local rule, the designation of a magistrate judge to hear pretrial matters, in accordance with 28 U.S.C. § 636(b), is automatic in the district and does not require the parties' consent. With respect to the attorney's appearance, the judge explained that the filing of a motion to dismiss acts as the filings of an appearance.

As the reviewed record is utterly devoid of any indication of conspiracy or illicit motivation by the judge or the magistrate judge, either in connection with any of the court's rulings or otherwise, the complaint is dismissed as frivolous, 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), Rules 11(c)(1)(C).

Absent evidence of improper motive, of which there is none, the judicial misconduct complaint procedure does not afford a mechanism for complainants to challenge rulings with which they disagree. See Rules of Judicial-Conduct, Rule 3(h)(3)(A). These include, among others, the designation of the magistrate judge, the appearance of the attorney, the extension of time for defendants to file an answer and the denial of complainants' motions. Accordingly, the complaint is also dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B).

Finally, complainants have been informed that their allegations against federal court staff, state court officials and others are not cognizable under the judicial misconduct statute.

See 28 U.S.C. § 351(a) and Rules for Judicial-Conduct Rule 4. Nonetheless, the misconduct complaint and the record offer no facts in support of the complainants' claims of conspiracy and other wrongdoing by the federal court clerk.

For the reasons stated, Judicial Misconduct Complaints No. 01-11-90017 and 01-11-90018 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

August 18, 2011
Date

Sandra L. Lynch
Chief Judge Lynch