

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90014

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: AUGUST 4, 2011

Complainant, a litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge in the First Circuit engaged in misconduct while presiding over the complainant's criminal proceeding. The complainant first alleges that the judge has intentionally delayed issuing rulings on complainant's competence to stand trial and on complainant's motion to suppress the testimony of a witness. The complainant next alleges that the judge wrongfully assisted and conspired with this witness in violation of federal law. The complainant includes apparent allegations pertaining to proceedings in a federal district court outside of the First Circuit.

The complaint is baseless.

With respect to the allegations of delay, "an allegation about delay in rendering a decision or ruling" is not cognizable, absent illicit judicial motivation. Rules of Judicial-

Judicial-Conduct, Rule 3(h)(B). The reviewed record - including the misconduct complaint, the docket, and relevant pleadings and court orders - lends no support to the claim that the judge was improperly motivated in connection with the specified rulings, or otherwise.

The record demonstrates that, since the complainant was indicted, the court has tirelessly endeavored to assess the complainant's competence to stand trial. In so doing, the judge has obtained numerous psychiatric reports and held multiple competency hearings and status conferences. Assessing the results of complainant's multiple evaluations, the court recently entered a thorough opinion and order resolving the issue. Any delay in the issuance of this ruling was not a product of improper judicial motivation. Accordingly, this claim is 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), and Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related.").

The same holds true for the other allegation of delay. Complainant's counsel filed the referenced motion to suppress the testimony of a proposed witness shortly after the complainant was indicted. The court promptly held an evidentiary hearing on this motion, after which it referred the complainant for initial psychiatric evaluation. The judge subsequently issued an order noting that the motion to suppress remained pending but that complainant was undergoing further psychiatric evaluation. It appears that the court has not to date issued a final ruling on the motion to suppress. On the present facts,

the pendency of this motion is not remotely suggestive of misconduct. See 28 U.S.C. §§ 352(b)(1)(A)(i), and (ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(B).

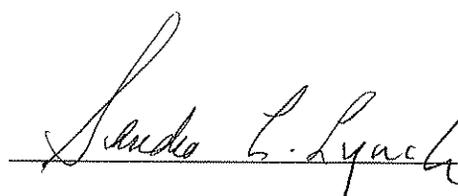
There is no information in the reviewed record in support of the remaining allegation that the judge assisted or conspired with the identified witness in the case. This allegation is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C).

Finally, any claims pertaining to a judge outside of the First Circuit are not cognizable here. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 7(a)(1).

For the reasons stated, Complaint No. 01-11-90014 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).

August 4, 2011

Date

A handwritten signature in cursive script, reading "Sandra L. Lynch", written over a horizontal line.

Chief Judge Lynch