

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-12-90020

---

BEFORE  
Lynch, Chief Circuit Judge

---

ORDER

ENTERED: SEPTEMBER 14, 2012

---

Complainant has filed a complaint against a district judge alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a). Complainant is not a litigant and is a citizen of the district in which the judge holds office.

The complaint is not based on any actions taken by the judge in a judicial capacity; it concerns the extra judicial conduct of the judge. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(2) and Commentary on Rule 3.

Complainant explains that the misconduct complaint was filed out of concern that reports in various news media concerning a highly publicized crime suggest that certain comments reportedly made by the judge, on a particular day, may undermine the high

regard generally accorded to the federal judiciary. The allegation concerns certain comments that complainant alleges were attributed by the media to the judge at the wake of the victim.

The crime involved the murder of a family member of another judge, not the judge who is the subject of this complaint. Another family member of that other judge, who was married to the victim, has, since the events which are the subject of the complaint, been named by local authorities as a suspect in the murder.

Complainant does not have or claim to have any personal knowledge of the events underlying the matters which are the subject of the complaint, or any evidence. Rather, complainant relies entirely on reports and statements made in the media.<sup>1</sup>

Complainant alleges that these local media reports suggest that the judge voiced "biased exculpatory comments" while responding to reporters' questions at the private wake of the victim, and that the comments were improper.

Pursuant to Rule 11(b) of the Rules of Judicial-Conduct, appropriate staff and I have conducted an inquiry into the allegations. This inquiry includes review of the media coverage of the relevant events. I have also requested and reviewed a response to the complaint from the judge. See Rules of Judicial-Conduct, Rule 11(b) and Commentary on Rule 11.

---

<sup>1</sup>The misconduct complaint does not include or cite to any specific news reports or articles but describes in general terms the media coverage complainant has seen.

Complainant alleges that local press reported that, at the victim's private wake service, the complainant publicly stated that he knew the other judge's family member, who has since been named a suspect in the crime, that this person was "incapable" of committing the murder and that this "was not the [person] that [the judge] knew." Complainant asserts that these remarks were "biased exculpatory comments" that have cast shadows on the highly respected federal judiciary. The claim that the judge made the two comments attributed to him is not supported by the information which I have reviewed. The comments which were made by the judge are different and do not provide any basis for a misconduct complaint.

The available media reports I have reviewed do not attribute the comments complainant describes to the judge. In fact, the press accounts of the judge's statements at the private service indicate that the judge described the other judge's family member (now a suspect in the crime) as a responsible, hard-working, intelligent person. The judge stated that he could not say that this person committed the crime, that it would be hard for the judge to believe, and that the other judge is a person of "irreproachable values."

It was another individual, not the judge, who was quoted by the press as saying that she had known the other judge's family member since he was a child and that this person would not be "capable" of committing the crime. And another family friend, also not the judge named in the present matter, was quoted as saying that this was "not the [person he] knew."

The judge explains that the statements he did make were made when, while attending the private wake for the victim at a funeral home, the judge was sought out by the media, who persistently requested the judge's comments. In response, the judge prefaced his statement to the press by saying that he was present in a personal capacity as a friend of the family. The judge noted the deteriorating criminal situation in the jurisdiction, as has complainant, who also noted and decried the high rate of violent crime in this jurisdiction. When the judge was asked directly by the media whether he thought that the family member of the other judge was involved in the murder, the judge states that he replied that "it's sad to live and experience this daily violence," and "[the family member] is a good person, [and] worker." The judge states that he stated that he "cannot say that [the family member] committed the crime," that it would be "hard to believe given that one knows his family," that the other judge "is a person of unquestionable high values," but that it was necessary to wait for the investigation to conclude.

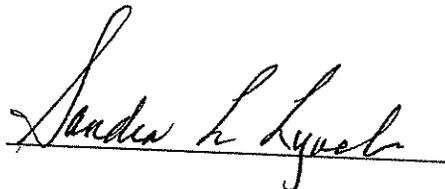
The judge prefaced his statements by explicitly noting that he was speaking in a personal, extra-judicial capacity. See Rules of Judicial-Conduct, Rule 3(h)(2), and Commentary on Rule 3. In this personal capacity and on the day of a private service, the judge, upon questioning by the media, attested to the integrity of the other judge, a friend. The judge was not testifying as a witness or addressing the "merits" of any case. See Code of Conduct for United States Judges (Code of Conduct), Canons 2B, 3A(6), and Commentary on Canon 3A(6). No formal charges had been brought at the time of the

judge's statement, in response to press inquiries, at the private event. The comments did not have a "prejudicial effect" on court business in any jurisdiction. See Rules of Judicial-Conduct, Rule 3(h)(2). The judge's comments were consistent with the presumption of innocence accorded to all criminal suspects.

Accordingly, the claim against the judge is dismissed as lacking factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D), and 11(c)(1)(A), respectively.

September 14, 2012

Date

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

Chief Judge Lynch