

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90013

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 2, 2015

Complainant, an attorney, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), alleging that the district judge who presided over a criminal case exhibited bias. Complainant does not represent a party to the case but reportedly observed counsels' opening statements. Complainant alleges that, during opening statements, the judge exhibited bias for the prosecution. For the reasons explained below, the misconduct complaint is unfounded and is not cognizable.

Complainant asserts that, prior to the trial, the judge had issued a ruling prohibiting the defense from referencing the defendant's family during its opening statement because any such evidence would not be relevant at that stage of the proceeding. Complainant contends that, although the prosecution was permitted to vividly describe the crime and its victims, the prosecutor repeatedly objected and

interrupted defense counsel's opening statement. Complainant continues that, when defense counsel stated that the jury would hear evidence about the influence of a family member, the judge "interrupted and yelled with marked hostility, 'Very *little* evidence!' (emphasis in original)." Complainant concludes that it is her "good faith belief that [the judge] committed misconduct . . . by interrupting the defense and interjecting a personal belief and bias against the defendant [and that such] actions were unfair, [] demeaning [and] were designed to undermine the defense before it had even been presented"

The transcript of the proceeding fails to lend any support for complainant's claims of bias or wrongdoing. As alleged, the government described the crime and victims during its opening statement. During defense counsel's opening statement, the judge overruled each of the prosecution's four objections. When the government objected to defense counsel's statement that the jury would hear evidence regarding the influence of a family member, the judge stated that such evidence would be "very limited," but allowed defense counsel to proceed.

This is not misconduct. The court merely qualified its decision overruling the government's objection with an observation on the amount of evidence that would be offered on the issue. The expression of views by the judge on the merits and the tone maintained by a judge do not alone suggest bias. See Boudin, C.C.J., In Re Complaint No. 444, January 23, 2007. Where, as here, there is no claim, let alone any evidence, suggesting that the judge's statement was based on anything beyond the record in the case, the statement is not remotely suggestive of bias or misconduct.

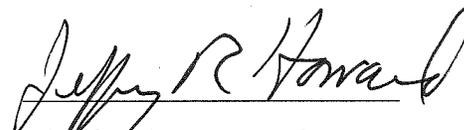
There is similarly no support in the record for the claim that the judge exhibited "marked hostility," or any improper animus. Accordingly, the misconduct complaint is dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Insofar as complainant objects to the court's rulings on the permissible scope of opening statements, the misconduct complaint 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).

For the reasons stated, Complaint No. 01-15-90013 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

11.2.15

Date


Chief Judge Howard