

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-08-90100

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: JANUARY 13, 2009

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On November 13, 2008, complainant, a litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The complainant alleges that the judge has violated the misconduct statute while presiding over a criminal proceeding against him.

The misconduct complaint essentially tracks the arguments that the complainant presented in a motion for recusal filed in the criminal case that the judge denied. These include the charges that the judge's impartiality should reasonably be questioned, that the judge had personal knowledge of facts relevant to the complainant's defense, and that the judge was biased against the complainant. The complainant concludes that the judge's failure to recuse himself constitutes violations of Canons 1 and 2 of the Code of Conduct for United States Judges (the Code), as well as the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct).

Shortly after the judge denied the complainant's motion for recusal, the complainant filed a petition for writ of mandamus with the court of appeals seeking an order requiring the judge's

disqualification, as well as a motion to stay the district court proceeding.<sup>1</sup> The court of appeals denied the petition for writ of mandamus, holding that “the judge’s rulings [do not] demonstrate any kind of bias or reason for the judge’s recusal.”

As an initial matter, violations of the Code of Conduct for United States Judges (Code of Conduct) and of the recusal statute, 28 U.S.C. § 455, do not necessarily constitute judicial misconduct. See Boudin, C.C.J., Order, In re: Complaint No. 385, September 27, 2004, at 3, citing Code of Conduct, Canon 1 Commentary (“While the Code of Conduct for United States judges may provide standards for consideration in judicial misconduct proceedings, . . . a violation of the Code . . . does not, ipso facto, violate the statutory standard of misconduct.”).

Similarly, a violation of the disqualification statute, 28 U.S.C. § 455(a) is not automatically a violation of the judicial misconduct statute. See Boudin, C.C.J., Order, In re: Complaint No. 362, December 16, 2003, at 2. Only a sufficiently egregious violation of the statute, combined with evidence of bad faith, might rise to the level of judicial misconduct. Id., and cases cited.

As the court of appeals has determined that there was no basis for the judge’s recusal, the present facts do not establish a violation of the Code of Conduct or of the disqualification statute, much less judicial misconduct. Nor does the thoroughly reviewed record --including the complaint, its attachments, relevant pleadings and court orders, as well as a written response to the allegations contained in the complaint requested and received from the judge-- provide any evidence that the judge was improperly motivated at any time during the proceeding. Accordingly, the misconduct

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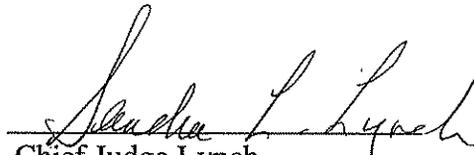
<sup>1</sup>On December 4, 2008, I issued an order staying the misconduct proceeding pending resolution of the petition for mandamus. See Lynch, C.C.J., Order, In re: Complaint No. 01-08-90100, December 4, 2008.

complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, Rule 11(c)(1)(D).

Since the judge's rulings and conduct in connection with the proceeding are not indicative of misconduct, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). Finally, insofar as the misconduct complaint reflects the complainant's disagreement with rulings issued by the court, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90100 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B).

1/13/09  
Date

  
Chief Judge Lynch