

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90017

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: AUGUST 23, 2010

An attorney has filed a complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), by a district judge in the First Circuit before whom the complainant has a pending case.

The complainant alleges that, during a status conference held to address outstanding discovery issues, the judge was rude and hostile, thus giving the impression that he lacked impartiality in hearing the matters before the court. Specifically, when the complainant stated to the court that the defendants were requesting witness information that had not previously been requested, the judge responded in a visibly angry, aggressive, and screaming manner. The complainant adds that the judge spoke very loudly and in a mocking tone, intending to humiliate and mock the complainant. The complainant found the judge's outburst shocking, and inconsistent with the requisite judicial temperament. The complainant notes that other attorneys present in the courtroom corroborated the complainant's perceptions of the inappropriateness of

the judge's conduct.

The complainant adds that the judge has a "penchant for resolving matters in undue haste, without giving an opposing party a minimum opportunity to respond." The complainant provides several examples of this "haste," including the court's allowance of a motion to compel filed by the defendants that the court partially granted seventeen (17) minutes after it was filed, and several other analogous instances from another case in which the complainant appeared before the judge.

Finally, the complainant asserts that the judge has a tendency to use the power to issue docket orders to scold and humiliate attorneys. In support of this charge, the complainant cites several other cases in which the judge allegedly stated that the court was "sick and tired of parties whining," had heard a certain "excuse too many times," and directed the complainant to review a case in which counsel had been negligent, allegedly implying that the complainant was behaving similarly.

I have taken the complainant's claims in this matter very seriously. As part of an inquiry, undertaken pursuant to the Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 11(b), both I personally and staff have reviewed the complaint and the case records, and have listened to the audio recording of the conference at which the judge was said by complainant to be rude and hostile. Both I and staff have also listened to a recording of a later hearing in the matter. In addition, the Circuit Executive has, at my direction, discussed the matter in person both with the judge in question and with other members of the judge's court and has reported back to me.

Our review of the complained of recorded status conference has led to the following

conclusions. The court addressed several disputed discovery issues. At one point, the complainant and the judge engaged in an animated discussion concerning the information that had, to date, been requested by the defendants in discovery. During this discussion, both the complainant and the judge repeatedly interrupted each other, as did opposing counsel. The judge and counsel also demonstrated impatience at times. Further, the exchanges between the two opposing counsel were heated. The precise moment of which complainant complains is evident, but may be perceived differently by different people. While the judge's voice is raised, he is not screaming and appears to be endeavoring to resolve the discovery disputes as expeditiously as possible. From the tape recording, the judge's overall tone during the conference is not mocking or insulting of the complainant or anyone else.

Moreover, when consulted by the Circuit Executive about the matter, the judge stated that he did not intend to show disrespect to the complainant in any way and very much regretted that any such perception may have occurred.

Finally, staff and I listened to the audio recording of a subsequent hearing in the case in which the court addressed a number of outstanding discovery issues. At this lengthy hearing, the judge heard from each party in full and was patient and courteous at all times in what is a hotly contested case.

The judge's conduct at the hearing in question does not provide a basis from which to find that the judge violated the Judicial Conduct and Disability Act. See Boudin, C.C.J., Order, In Re: Complaint No. 444, *supra*, at 4 ("[A]bsent extraordinary circumstances, the tone maintained by the judge during a proceeding is not a basis for a finding of misconduct."). See also Boudin, C.C.J., Order, In Re: Complaint No. 431, June 26, 2006, at 5, in which then Chief Judge Boudin,

based upon his review of a taped hearing, explained that a judge's "briskness of manner" was neither uncommon nor provided an "objective basis . . . to support a finding of either favoritism or discourtesy." Accordingly, the charge that the judge's behavior at the hearing constituted misconduct is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rules 11(c)(1)(A) and 11(c)(1)(D).

I now turn to the complainant's remaining concerns. Regarding the judge's alleged "haste" in deciding motions, a judge is not necessarily required to review a party's opposition to a motion before ruling on it, although it often would be better practice to do so. See Order, *supra*, In Re: Complaint No. 406, December 22, 2005. Each of the complainant's examples of this behavior concerned orders designed to move the case along, and as to which the court demonstrated its willingness to reconsider as needed. The judge's actions in this regard do not provide a basis on which to find misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 11(c)(1)(A).

Finally, the complainant asserts that the judge has used orders to "scold and humiliate attorneys." Again, the judge responds that there was and is no such intent. Judges may and do describe errors made by counsel and express frustration with certain conduct. The examples provided by the complainant do not go beyond proper commentary and they are not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 11(c)(1)(A).

In sum, I have determined, based upon my thorough review of the matter, that the judge's behavior did not violate the Judicial Conduct and Disability Act. The judge is well aware of the

importance of not giving even the appearance of lack of impartiality, as well as the desirability of courteous treatment of counsel. For the reasons stated, Judicial Misconduct Complaint No.01-10-90017 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B).

8/23/10

Date

Sandra L. Lynch

Chief Judge Lynch

importance of not giving even the appearance of lack of impartiality, as well as the desirability of courteous treatment of counsel. For the reasons stated, Judicial Misconduct Complaint No.01-10-90017 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B).

8/23/10

Date

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