

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90019

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 9, 2010

Complainants filed a second complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), against a First Circuit bankruptcy judge. The complaint was submitted in conjunction with the petition for review filed in the complainants' first misconduct proceeding. The complainants submit documents that allegedly detail the judge's "various abuses of law, and the harm that [the judge's] freewheeling and prejudicial actions caused to creditors and debtors alike."

The submitted documents include, but are not limited to, correspondence with the Internal Revenue Service concerning the complainants' tax liability, correspondence from the complainants to the President of the United States and to members of Congress, excerpts from a website on bankruptcy fraud, and correspondence from the present proceeding. They provide no evidence of bias or judicial impropriety.

Complainants also provide two affidavits allegedly signed by a creditor. The first of these

predates the litigation at issue and has no bearing on the present matter. In the other affidavit, the creditor states that, at a hearing the previous day, the judge denied all of the motions filed by the complainants and exhibited a "hateful" tone of voice. This hearing was held in an involuntary bankruptcy proceeding that was filed after the court's dismissal of the voluntary case at issue in the first misconduct complaint. The creditor further states that he was prejudiced by the court's authorizing the sale of land in which he had an interest, and concludes that the judge's "dislike, hatred and bias towards [the complainants] . . . is well-known to [him]."

Both my staff and I have listened to the audio recording of this hearing in full. It provides no corroboration for the statements in the affidavit. The judge's tone is quiet and calm throughout, and there is no indication of any animosity or bias in the court's consideration of the issue. The judge hears from all of the parties present before allowing the motion for relief from stay on numerous cited grounds. Nor would the judge's tone alone provide grounds for a finding of misconduct. See Lynch, C.C.J., Order, In Re: Complaint No. 01-09-90017, January 7, 2010, at 6, and *cases cited*.

Accordingly, the complaint is dismissed as conclusively refuted, 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 for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(D), and 11(c)(1)(A), respectively. Finally, as there is no evidence that the judge's ruling on the motion was improperly motivated, the complaint is also dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rules 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No.01-10-90019 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B).

9/9/10
Date

Sandra L. Lynch
Chief Judge Lynch