

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90019

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 covering a highly publicized crime suggest that the judge's conduct, on a particular day, may have undermined the high regard generally accorded to

the federal judiciary. The complainant alleges that the judge was seen going into an unauthorized area at the home on the day the victim was found.

The crime involved the murder of a member of the family of the judge. Another family member of the judge has since been named by law enforcement officials as a suspect in the murder, but was not so named on the day of the events which are the subject of this complaint. The complainant also expresses sympathy for the judge, who is described in the complaint as having a "long and distinguished" career, and for the tragedy of the murder of a family member.

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 and on public video clips which complainant has seen.¹

Complainant alleges that these local news reports and videos depict the judge appearing, on the particular day the victim was found, with the other family member, at the home shared by both the victim and the other family member. Law enforcement officials had been notified of the crime and had secured the scene. Complainant refers to news reports and videos showing the judge going beyond a police tape outside of the family home. They also show the judge speaking with law enforcement officials at the

¹The 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.

home. Based on these reports, complainant asserts that the judge's actions that day give the appearance of the judge exercising "undue influence" on a criminal investigation, and possibly worse conduct. This conduct is said to have cast a shadow on the highly regarded federal judiciary in that jurisdiction.

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 events. I have also requested and reviewed the judge's response to the complaint. See Rules of Judicial-Conduct, Rule 11(b) and Commentary on Rule 11. For the reasons explained below, and based on the information available to me from the sources identified, I dismiss the complaint. See 28 U.S.C. §§ 352(b)(1)(B), and 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D), and 11(c)(1)(A), respectively.

Complainant states that the judge was depicted on videotape as crossing the police yellow tape cordon outside the home, entering the area within the tape, "giving instructions" to law enforcement officers, and talking with the local district attorney. The local law enforcement authorities who had secured and were in control of the location stated that the judge's actions were authorized by and he was escorted by the law enforcement officials present. The judge has confirmed this.

The information available to me is that the judge went to the house on being informed that there was an emergency there. The videotapes and other media reports of

the matter contain no statements, direct or otherwise, by law enforcement officials supporting the claim that the judge was not authorized by them to be present or that he in any way exceeded the scope of this authorization by the officials. In fact, subsequent media reports contain specific statements by law enforcement officials, including the police superintendent, the district attorney, and the attorney general that the judge's actions at the home were authorized by the officials at the scene.

Local law enforcement officials have corroborated the judge's account that his actions were fully authorized by them and were not improper. The police superintendent has publicly stated that the judge "did not force his way in there, the judge was allowed to go in" The district attorney also confirmed that the judge was "authorized" to be on the scene, that the investigation has proceeded entirely "according to the law," and that office is "completely satisfied" with the management of the case. The district attorney has also confirmed that the judge was escorted at all times and never entered the area where the victim had been found. The attorney general has likewise stated that the judge's presence and conduct at the home on that day were authorized by the officials present and that authorization was appropriate. The information available to me provides no basis for concluding that the judge entered any area without authorization from the authorities in charge, or in any way interfered with or influenced the law enforcement officers' investigation at the victim's home as alleged in the complaint. There is no basis for further inquiry into this complaint. See Rules of Judicial-Conduct, Commentary on

Rule 11. It is my hope that the public's high regard for the federal judiciary to which the complainant attests will hold true throughout this difficult matter.

Accordingly, the complaint 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 that reads "Sandra L. Lynch". The signature is written in black ink and is positioned above a horizontal line.

Chief Judge Lynch