

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90021

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 14, 2012

Complainant filed a complaint against a district judge alleging a potential violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a). Complainant is not a litigant. Complainant is a representative acting on behalf of an association of local law enforcement officers. Complainant alleges that the judge's conduct on a particular day and time, as portrayed in the media, in connection with the investigation of a recent and highly publicized violent crime may have been "somewhat irregular." Complainant requests that "the appropriate investigation be conducted" into the propriety of the judge's actions. The complainant is clear that he is concerned not with any conduct by the judge in an official capacity, but rather with extra-judicial conduct by the judge. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule

3(h)(2) and Commentary on Rule 3.

The victim of the crime was a family member of the judge who is the subject of this complaint. Media reports have, after the day of the events described in the complaint, stated that authorities have named another family member, the husband of the victim, as a suspect in the murder. Complainant alleges that “several visual images presented by the local media” depict the judge on the day the victim was found “inside the perimeter” of what it describes as the crime scene, and allegedly giving instructions to law enforcement officials present at the scene to accompany the judge inside the residence. Complainant notes that the judge is aware of the need to preserve a crime scene in order to ensure the “purity of the investigative procedures,” and is concerned that the judge’s conduct at the home that day, as portrayed in the media, may have been improper. Complainant does not allege actual impropriety by the judge. The misconduct complaint does not include or cite to any specific articles or news accounts but generally describes media coverage that the complainant has seen.

Pursuant to Rule 11(b) of the Rules of Judicial-Conduct, appropriate staff and I have conducted an inquiry into the allegations. This inquiry has included a thorough review of the misconduct complaint, as well as 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, I dismiss the misconduct complaint as factually unsupported and, on the facts available to

me, as not indicative of misconduct. See 28 U.S.C. §§ 352(b)(1)(B), and 352(b)(1)(A)(i), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(D), and 11(c)(1)(A).¹

The information available to me contains no evidence to support the speculation that the judge entered an area without the authorization and permission of the law enforcement officials present at the home on the day the victim was found or thereby interfered with the investigation. To the contrary, the local law enforcement officials present have stated that the actions taken by the judge at the home were fully authorized by them, and that their investigations proceeded in accord with the law. The attorney general has affirmed these statements. Explicit statements to that effect have been made by the police superintendent, the district attorney and the attorney general. 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 stated that the judge was “authorized” to be on the scene, was escorted at all times, that the investigation has proceeded entirely “according to the law,” and that office is “completely satisfied” with the management of the case. The media reports that 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. In fact, the attorney general stated that the judge gave permission on behalf of the property owner to the police to enter the area of the house

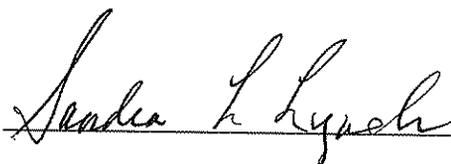
¹Complainant also references the canons of ethics. While the canons may provide guidance for consideration in judicial misconduct proceedings, not every violation of the Code of Conduct constitutes misconduct under the statute, 28 U.S.C. §§ 351, et. seq. See Code of Conduct for United States Judges, Commentary on Canon 1.

that they wanted to inspect. Law enforcement officials were in control of the home on the day and time of these events and the judge complied with their instructions.

There is no basis for further inquiry into this complaint. See Rules of Judicial-Conduct, Commentary on Rule 11. Accordingly, the misconduct complaint is dismissed as factually unfounded, 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, reading "Sandra L. Lynch", written over a horizontal line.

Chief Judge Lynch