

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90039

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 5, 2011

Complainant, an attorney, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a bankruptcy judge engaged in misconduct during a hearing on complainant's application for compensation. Complainant had appeared as counsel for the debtors.

The complainant alleges that the judge engaged in misconduct when he violated Canon 3(A)(3) of the Code of Conduct for United States Judges. Complainant contends that the judge treated complainant in a "rude, demeaning, ill-tempered, and openly hostile" manner during a telephone hearing that the judge called on complainant's application for fees and expenses.

Complainant provides three examples of the judge's alleged improper conduct. First, complainant states that, when he bid the judge "good morning" at the outset of the

hearing, the judge responded with a statement to the effect that it was afternoon on the East Coast. Second, complainant asserts that the judge questioned complainant's claim that he was entitled to reimbursement of travel expenses from the estate funds and "bullied" complainant until he "conceded" that he was not. Finally, complainant contends that the judge accused complainant of "'over-serving' [documents] for the sole purpose of running up [postage] costs." Complainant concludes that the judge "did not have to be so nasty" and is "unfit" for judicial office.

The misconduct complaint is baseless. As an initial matter, a violation of the Code of Conduct for United States Judges (Code of Conduct) does not necessarily constitute misconduct under the governing statute, 28 U.S.C. §§ 351, *et. seq.* See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3, and Code of Conduct, *supra*, Canon 1, Commentary. Moreover, the information obtained by means of a limited inquiry in the present matter, undertaken pursuant to Rule 11(b) of the Rules for Judicial-Conduct, demonstrates no violation of the Code of Conduct, let alone the judicial misconduct statute.

The audio recording of the hearing at issue does not support the claims. During the hearing, which lasted under ten minutes, the judge calmly and politely questioned complainant about his fee request. The judge's demeanor was completely calm, measured, and polite. While a judge's tone is not alone indicative of misconduct, see Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4, the judge in the present matter did not raise his voice or address complainant in a rude or discourteous

manner. The judge asked complainant to explain the travel charges incurred, inquired into the postal charges, and described specific mechanisms that the court recommends to counsel for limiting postage costs. At no time did the judge suggest - explicitly or implicitly - that complainant had intentionally sought to drive up his costs.

The allegations that the judge "bullied" complainant, was "nasty" or "hostile," or otherwise acted improperly during the relevant hearing are conclusively refuted by the reviewed record. See 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

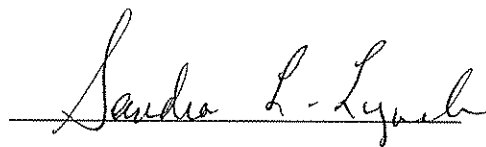
At the onset of the hearing, the judge reminded complainant of the time difference between complainant's location and that of the court, which can hardly be objectionable. As to the appropriateness of the charged fees, the judge had a duty to the court and to the debtors to ensure that counsel's charges were reasonable. Accordingly, the complaint is also dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Finally, as there is no evidence of bias or misconduct, insofar as complainant disputes the fee reduction subsequently ordered by the court, the misconduct complaint is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaints No. 01-11-90039 is dismissed, pursuant to 28 U.S.C. 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(D).

December 5, 2011

Date

A handwritten signature in cursive script, reading "Sandra L. Lynch", is written over a horizontal line.

Chief Judge Lynch