

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-21-90029

In re Complaint of John Doe¹

This is a judicial complaint by a criminal defendant (“complainant”) against the United States district judge assigned to the complainant’s case. The judicial complaint alleges that during a status conference, the district judge directed the court reporter to stop recording. The judge then spoke disparagingly of the complainant’s refusal to sign certain documents that were part of the proceeding. The court then indicated to complainant that its displeasure with his refusal would produce an unfavorable outcome in future proceedings involving complainant should he return. The complainant believes that the district judge will not “treat[] [the complainant] fairly” based on these statements. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4(a)(2)(B) (“Cognizable misconduct includes . . . treating litigants . . . in a demonstrably egregious and hostile manner.”)

A judicial complaint may be “concluded on the ground that voluntary corrective action has been taken.” J.C.U.S. Rule 11(a)(2). More specifically, “[t]he chief judge may conclude a complaint proceeding in whole or in part if . . . the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.” J.C.U.S. 11(d)(2); *see also* 28 U.S.C. § 352(b)(2) (“[T]he chief judge . . . may . . .

¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

conclude the proceeding if the chief judge finds that appropriate corrective action has been taken”). “Under the Rule, action taken after a complaint is filed is ‘appropriate’ when it acknowledges and remedies the problem raised by the complaint.” J.C.U.S. Commentary on Rule 11. The subject judge’s “[v]oluntary corrective action should be proportionate to any plausible allegations of misconduct in the complaint.” *Id.* “Rule 11(d) implements the [Judicial Conduct and Disability] Act’s provision for dismissal if voluntary appropriate action has been taken.” *Id.*

Here, the subject judge took voluntary corrective action in the form of recusal from the complainant’s case. I conclude that the voluntary corrective action was proportionate to the alleged misconduct and appropriate.

Accordingly, the judicial complaint is dismissed. *See* J.C.U.S. Rule 11(d)(2).

October 6, 2022



Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit