

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-21-90049

In re Complaint of John Doe¹

This is a judicial complaint filed by a former court employee (“complainant”) against a United States district judge. The judicial complaint was filed against the district judge “in [the district judge’s] legal capacity as the person in charge of the treatment of employees working for [the district].”

The complainant identifies the district judge as placing the complainant under the “supervision” of a certain court employee, who communicated to the complainant that the complainant’s department was being consolidated in accordance with the district judge’s directions. According to the complainant, despite excellent performance reviews, the complainant was called to a meeting by certain court employees and advised that if the complainant remained working for the court, the complainant would have to take a pay cut; alternatively, the complainant could accept a buyout. At that meeting, the complainant informed the court employees that the complainant felt “mistreated and did not deserve this.” One of the court employees informed the complainant that the decision “was not performance related but [instead] what the [district] [j]udge . . . wanted.”

The complainant then alleges that the complainant was relocated to another area of the courthouse and learned that certain records were “lost,” leading the

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.

complainant to believe that the court employees “were going to do anything possible to obstruct the transition.” In the complainant’s new position, the complainant did not receive “any negative feedback concerning [the complainant’s] performance other than to correct a few minor oversights/mistakes due to [the complainant’s] unfamiliarity of the position.”

Following the transition, the complainant alleges that the complainant was called to a meeting with certain court employees. At the meeting, the complainant explained “that any mistakes that were made were not intentional, and that [the complainant] would do whatever they wanted [the complainant] to do to make any corrections.” According to the complainant, the meeting was “very one-sided . . . with each of [the court employees] taking turns berating [the complainant].” The complainant responded that the complainant “was never trained” and that the complainant’s supervisor “never provided any input or assistance.” The complainant characterizes the meeting as “very unprofessional.” When the meeting adjourned, the court employees advised the complainant that “they didn’t know what they were going to do.” The complainant was scheduled to take vacation leave the following day and did so.

According to the complainant, upon returning from vacation leave, the court employees again met with the complainant. At that meeting, the complainant was presented with two options: termination or resignation. One of the employees “read a prepared paragraph saying [the complainant] didn’t have the proficiency to work in finance.” The complainant asserts that the “dismissal had absolutely nothing to do with the position [the complainant] was in.” The complainant surmises that the district judge’s “lack of oversight and direction on how [the district judge’s] appointees act needs to be addressed,” as the complainant was told “numerous times [that the district judge] [was] the one wanting this, and that [the district judge] was aware of everything.” The complainant concludes that the complainant’s “rights as an employee were totally disregarded and the reason for that is, those disregarding the

employee policies know they will not face any retribution.” The complainant maintains that the complainant was deprived of due process.

After the complainant filed the judicial complaint, the complainant filed a Formal Complaint pursuant to a district court’s Employment Dispute Resolution (EDR) Plan. The complainant alleged discrimination based on race, color, sex, gender, and age, as well as abusive conduct, all in connection with the complainant’s termination. Because this judicial complaint matter was closely intertwined to the EDR proceeding, I held the judicial complaint in abeyance pending completion of the EDR process.

The EDR process is now complete, and the abeyance is lifted. During the EDR process, the Presiding Judicial Officer held that, viewing the facts in the light most favorable to the complainant, the complainant’s discrimination and abusive-conduct claims failed. Specifically, the Presiding Judicial Officer concluded that the discrimination claims failed because the complainant provided no evidence (direct or indirect) from which a reasonable juror could conclude that discrimination occurred. The Presiding Officer determined that the district court “articulated a legitimate, non-discriminatory reason for [the complainant’s] termination: [the complainant’s] performance deficiencies.” The complainant was not able “to show by a preponderance of the evidence that the proffered reason for [the] termination is a pretext for unlawful discrimination.”


The Presiding Officer also concluded that “[c]onstrued in [the complainant’s] favor, [the complainant’s] allegations and evidence do not support a claim of abusive conduct.” The Presiding Officer “listed . . . carefully” to an audio exhibit and determined that “[t]he audio present[ed] an even-tempered meeting between [the complainant] and other employees, during which the others inquired about [the complainant’s] performance issues and gave [the complainant] an opportunity to respond to their concerns.” The Presiding Officer further stated that the complainant’s “belief that [the complainant] was inadequately trained for [the] position does not

give rise to the severe or pervasive conduct required to create an abusive working environment.”²

Having reviewed the record,³ I conclude that the judicial complaint fails to present a basis for a finding of cognizable misconduct. *See* J.C.U.S. Rule 4. The Presiding Officer’s order dismissing the complainant’s EDR complaint determined, among other things, that the complainant failed to prove that the complainant suffered discrimination or abusive behavior by the supervising court employees. In light of the Presiding Officer’s decision, the complainant’s judicial-misconduct claim that the district judge failed to properly supervise court employees who treated the complainant in an abusive manner fails for a “lack[] [of] sufficient evidence to raise an inference that misconduct has occurred.” J.C.U.S. Rule 11(c)(1)(D).

The judicial complaint is dismissed.

July 24, 2023



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

²The complainant did not file a Request for Review of the Presiding Officer’s order, and the time to do so has expired.

³*See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b).