

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90066

In re Complaint of John Doe¹

This is a judicial complaint filed by an anonymous filer (“complainant”) against a United States district judge. The judicial complaint alleges that the district judge “has violated several Canons for U.S. judges in . . . sentencing [a certain criminal defendant].” First, the judicial complaint alleges that the district judge violated Canon 1—“[a] [j]udge [s]hould [u]phold the [i]ntegrity and [i]ndependence of the [j]udiciary”—by “asking for a favorable jail location of the executive branch.” The complainant maintains that it is the Federal Bureau of Prisons “job to know where to place prisoners,” not the judiciary’s job.

Second, the judicial complaint alleges that the district judge violated Canon 2A—“[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary—by denying the complainant’s request for “copies of all 145 letters that [the district judge] held up in open court and referred to . . . in [the] court transcript” and labeling the letters as “protected.”

Third, the judicial complaint alleges that the district judge violated Canon 2A by opining that the defendant was “of outstanding character” and thus showing “bias” in favor of that defendant. The complainant further claims that the district judge

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.

showed “bias for [the defendant] to go to a prison that makes it easy to see [the defendant’s] famil[y].”

Fourth, the judicial complaint alleges that the district judge violated Canon 2B, which provides, in relevant part, “[a] judge should not testify voluntarily as a character witness.” The complainant alleges that the district judge violated Canon 2B by becoming “a character witness when he stated that [the defendant] was ‘of outstanding character.’”

Fifth, the judicial complaint alleges that the district judge violated Canon 3A—“[a] [j]udge [s]hould [p]erform the [d]uties of the [o]ffice [f]airly, [i]mpartially and [d]iligently”—by giving “a downward departure of 150%” to the defendant. The complainant surmises that the only explanation for the defendant’s sentence was the district judge’s “bias for [certain officials] to the detriment of the court, and the citizens of the judicial circuit.”

Having reviewed the record, *see* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b), I conclude that no cognizable misconduct has occurred, *see* J.C.U.S. Rule 4(a). As to the first allegation, no judicial canon was violated. In fact, the Supreme Court has expressly recognized that “[a] sentencing court can *recommend* that the BOP place an offender in a particular facility or program.” *Tapia v. United States*, 564 U.S. 319, 331 (2011) (emphasis added) (citing 18 U.S.C. § 3582(a)).

As to the second allegation, no judicial canon was violated. The district judge acted in accordance with Local Rule 49.1 of the federal district in which the district judge sits. Rule 49.1(c)(1)(F) specifies that “a presentence report or victim-impact statement” are documents that “must be filed under seal and must not be unsealed except by court order.” And Rule 49.1(c)(2)(I) provides that “letters, emails and similar materials submitted in connection with a sentencing hearing” “may be filed under seal without obtaining the court’s permission and will be unsealed when the

judgment is entered.” However, Rule 49.1(f) provides, “The court may extend the time a document is sealed on its own motion or a party’s motion.” *Id.* 49(f). “The order extending the time a document is sealed must direct the clerk to unseal the document on a specific date.” L.R. 49(f)(3). Here, the district judge entered an order specifying that “all sealed filings in this case shall remain sealed for ten years from the date of this Order.” The court explained that “it [was] in the interest of justice that all matters previously filed under seal in this case should remain under seal for a period of ten years, to protect the confidential information in the filings and to allow [the defendant] to fully serve [the] sentence and successfully reenter society.”

Third, the district judge did not violate a judicial canon in making its sentencing remarks. I have reviewed the sentencing transcript. *See* J.C.U.S. Rule 11(b). The sentencing transcript shows that the district judge discussed “the Section 3553(a)” factors in imposing the defendant’s sentence. The district judge stated, in relevant part:

Now, pursuant to the Section 3553(a), this Court takes into consideration a number of factors:

. . .

C, your history and characteristics are rather straightforward. You’re a person of outstanding character. [A former official] points out that character is the most important criteria for a new [official]. Notwithstanding the argument of the government, you were truly a new rookie [official] serving your third shift, serving your first shift with another new rookie [official]. [The department], by some convoluted rules, sent you out together in one of the most difficult areas of the city. The circumstances of this case place you squarely out of your actual character and a variance is the result.

The district judge complied with its lawful obligation to “consider all of the [18 U.S.C.] § 3553(a) factors.” *Gall v. United States*, 552 U.S. 38, 49–50 (2007). This

included consideration of the defendant’s “history and characteristics.” 18 U.S.C. § 3553(a)(1).

Fourth, for the same aforementioned reason, the district judge did not violate a judicial canon by referencing character evidence in the record.

Finally, the district judge did not violate a judicial canon in imposing the defendant’s sentence—a downward variance from the United States Sentencing Guidelines. Having reviewed the sentencing transcript, I find no evidence of bias. Instead, the transcript reflects the district judge’s enumerated consideration of the § 3553(a) factors.

In summary, having reviewed the record, I conclude that to the extent that the judicial complaint challenges the district judge’s aforementioned rulings, the allegations must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge showed bias or engaged in other improper conduct, the allegations are “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(C), (D).

Accordingly, the judicial complaint is dismissed.

November 8, 2022



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