

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90085

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge who originally presided over the complainant’s criminal case. The judicial complaint alleges that the district judge “acted with bias, prejudice[,] and a partial state of mind by [the district judge’s] substantial assistance to the government in prosecuting the instant case against the complainant and all listed defendants of the defective indictment thereby violating the complainant[’s] and all defendants United States constitutional rights and providing for an unfair hearing and trial.”

Three exhibits are attached to the judicial complaint: (1) the indictment; (2) an affidavit attached to the government’s response to the complainant’s motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 filed in a separate case; and (3) jury instructions. According to the judicial complaint, the indictment “failed to properly inform the complainant of the federal charges to which he must defend.” The judicial complaint further alleges that “[t]he jury instructions . . . w[ere] completely devoid of the charge to the jury for element number two (the affect on interstate commerce).” The judicial compliant claims that “the omission of the charge for element number two [in the jury instructions] was perhaps maliciously and purposely omitted.” The judicial complaint concludes that “this deliberate act of ommitting [sic] a crucial and most essential elements charge and or explaining to 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.

jury of what conduct was either needed and or performed by any defendants” demonstrates that there was “absolutely no way for the jury to determine that the defendants did in fact violate this most crucial and essential . . . element and to bring guilty verdicts for the trial defendants.”

The judicial complaint is a direct attack on the indictment and final jury instructions given to the jury by the district judge. To the extent that the judicial complaint challenges the district judge’s rulings and instructions, 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 is biased or prejudiced against the complainant or engaged in other judicial misconduct, the allegations are “frivolous” and “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).

The judicial complaint is dismissed.

November 7, 2022



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