

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90087

In re Complaint of John Doe¹

This is a judicial complaint brought by a civil plaintiff (“complainant”) against the United States district judge who entered summary judgment in favor of the defendant.

The judicial complaint alleges that “a law clerk who worked for the opposing party’s law firm even prior to [the complainant’s] case commencing was allowed to work on [her] case,” resulting in a conflict of interest. To support this assertion, the judicial complaint further alleges that the district judge’s former law clerk worked as an associate for the opposing party’s law firm from roughly September 2017 until July 2020. The law clerk then began her service as a federal judicial law clerk, first with a magistrate judge from roughly August 2020 to August 2021, and then with the district judge from roughly September 2021 to September 2022. The complainant “highly suspect[s]” that this law clerk worked on her case.

The district judge has submitted a response. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Commentary on Rule 11 (“Subject judges receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them.”). The district judge states:

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.

[The complainant's] concerns are unquestionably reasonable in the abstract, but her assertion that [the law clerk] worked on her case is not correct. Because [the complainant's] case was pending with the [opposing party's law] firm while [the law clerk] worked there, the Code of Conduct for Judicial Employees, specifically Canon 3F(2)(a)(ii), prevented [the law clerk] from working on [the complainant's] case. Because of this Canon's requirements, all substantive matters in [the complainant's] case were handled entirely by a law clerk from another judge's chambers.

Having reviewed the record, I conclude that insufficient evidence exists to raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(D). The complainant merely speculates that the law clerk worked on her case. By contrast, the district judge's response sets forth the measures that the judge took to comply with the Code and ensure the law clerk *did not* work on the complainant's case.

The judicial complaint is dismissed.

June 13, 2023



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