

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90094

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge assigned to the complainant’s criminal case.

The judicial complaint alleges that the district judge “has engaged in a pattern of misconduct,” resulting in “witness tampering, jury tampering, blocking access to certain legal information, electronic eavesdropping, humiliation, embarrassment, compliance with laws, intimidation of neutralized innocent parties, perjury incitement, actual perjury, the withholding of evidence, and further violations of attorney-client relationships and privileges.” In support of the allegations, the complainant cites (1) comments the district judge allegedly made during jury selection, (2) the district judge’s denial of a motion to withdraw filed by the complainant’s attorney, and (3) the district judge’s denial of the complainant’s second motion for compassionate release.

The complainant first alleges that during the jury selection process, the district judge “stated he was going to cut [the complainant’s] trial time in half due to [the district judge’s] . . . son’s college graduation,” resulting in “[t]he attorneys . . . laugh[ing] in the courtroom” and the complainant’s “embarass[ment] and humiliat[ion].” I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule

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.

11(b). The transcript of voir dire does not substantiate the complainant's allegations. In fact, the transcript reveals that the district judge advised the jury that the complainant's trial was "going to be a little bit *longer* in duration" and that "the longest th[e] case w[ould] go for [was] three weeks." (Emphasis added.)

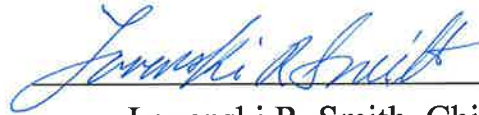
The complainant next alleges that the district judge showed bias in "refusing to allow [the complainant's] counsel to withdraw from the criminal matter despite a severe conflict of interest between [the complainant] and [the attorney] that ruined the attorney-client relationship." This allegation constitutes a direct attack on the ruling of the district judge and 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).

Finally, the complainant alleges that the district judge "ignored his request for recusal and ruled biasedly against [the complainant]" in denying the complainant's second motion for compassionate release. In that motion, the complainant alleged that the district judge "ha[d] proven . . . to be biased, brash, harsh [against the complainant] and further lack[ed] compassion and mercy towards [the complainant]" by not recognizing the complainant's "declining, horrible, and extreme health issues." In the reply to the government's response, the complainant specifically alleged that the district judge "ha[d] previously ruled biasedly against [the complainant] by "ruling against" the complainant in denying the prior compassionate-release motion. These allegations must be dismissed, however, because "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." J.C.U.S. Rules 4(b)(1), 11(c)(1)(B).

To the extent the judicial complaint makes any further allegations that the district judge showed bias or prejudice 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.

July 5, 2023

A handwritten signature in blue ink, reading "Lavenski R. Smith", written over a horizontal line.

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