

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90116

In re Complaint of John Doe¹

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

First, the judicial complaint alleges that the district judge failed to inquire when the complainant’s attorney notified the district judge that the court security officer “had an interpersonal relationship with [the complainant’s] wife” and again “tacitly failed with acquiescence to address the asserted matter” at the complainant’s sentencing. Second, the judicial complaint alleges that the district judge “abdicat[ed]” judicial duties in disposing of a motion for severance.

I have reviewed the exhibits attached to the judicial complaint as well as the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). They show that the complainant, along with a co-defendant, filed a motion for severance, seeking severance of their trial from the trial of other co-defendants. The magistrate judge recommended that the district judge grant the severance motion “to the extent that [the complainant and his co-defendant] be tried together, but separate from [the remaining defendants].” The district judge adopted the magistrate judge’s report and recommendation and granted the severance motion.

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.

At sentencing, the district judge permitted the complainant to speak prior to imposing the sentence. The complainant detailed certain “traumatic events,” including the demise of the complainant’s marriage. The complainant stated:

[T]o have to come to this court to be faced with the Courtroom Security Officer that broke up my home, and watch him as he escorted the jury to and from, brought back memories of why me, and my kids, and my [spouse] weren’t together anymore. That’s the past, but I still think myself that it has some kind of effect of what’s going on with . . . the Courtroom Security Officer escorting the jury to and from.

Following the complainant’s statement, the government commented that

to the extent that [the complainant] is making any allegation that a Court Security Officer handled themselves inappropriately, or exercised undue influence on the jury in this case, to the Government’s knowledge, there is no basis to support that whatsoever. We don’t concede any factual allegation [the complainant] is making or putting on the record at this time.

The district judge then provided reasons for imposing the complainant’s sentence.

Having reviewed the exhibits and record, to the extent the judicial complaint’s allegations challenge (1) the district judge’s handling of the complainant’s allegation concerning the court security officer, (2) the complainant’s sentence, and (3) the severance order, they 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 abdicated judicial duties or otherwise engaged in judicial misconduct, such allegations are “frivolous, 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.

June 28, 2023



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