JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90082

In re Complaint of John Doe[1]

This is a judicial complaint filed by a civil litigant ("complainant") against the United States district judge assigned to the complainant's case. The judicial complaint alleges that an online video shows the district judge's "abusive behavior." First, the judicial complaint alleges that the district judge "blatantly admits [to] malfeasance by having [the district judge's] law clerks write [judicial] opinions for [the district judge]." Second, the judicial complaint alleges that the district judge "admits all pro se complaints go to . . . separate . . . lawyers." Third, the judicial complaint alleges that the district judge "suggest[ed]" that the judge engages in "ex parte communication" by stating, "I want the other party to have an ore in the water before making a decision to grant TRO." Fourth, the judicial complaint alleges that "no judge wrote th[e] opinion" in the complainant's case. Fifth, the judicial complaint alleges that "the video also provides the public this Judge[']s political bias where he describes 'President Trump and his henchmen' that worries him and the direction this country is going. Proving the political winds this Judge blows."

I have reviewed the record and online video cited in the judicial complaint. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). As to the first four allegations, I conclude that such allegations are "frivolous, lacking sufficient evidence to raise an inference

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[1]Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainants and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

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 fifth allegation alleges that the district judge made a partisan statement. *See* J.C.U.S. Rule 4(a)(1)(D). A judicial complaint may be "concluded on the ground that voluntary corrective action has been taken." J.C.U.S. Rule 11(a)(2). More specifically, "[t]he chief judge may conclude a complaint proceeding in whole or in part if . . . the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint." J.C.U.S. 11(d)(2); *see also* 28 U.S.C. § 352(b)(2) ("[T]he chief judge . . . may . . . conclude the proceeding if the chief judge finds that appropriate corrective action has been taken . . . ."). "Under the Rule, action taken after a complaint is filed is 'appropriate' when it acknowledges and remedies the problem raised by the complaint." J.C.U.S. Commentary on Rule 11. The subject judge's "[v]oluntary corrective action should be proportionate to any plausible allegations of misconduct in the complaint." *Id.* "Rule 11(d) implements the [Judicial Conduct and Disability] Act's provision for dismissal if voluntary appropriate action has been taken." *Id.*

Here, the subject judge took voluntary corrective action by requesting that the video be removed from the internet. I conclude that the voluntary corrective action was proportionate to the alleged misconduct and appropriate. Accordingly, the judicial complaint is dismissed. *See* J.C.U.S. Rule 11(d)(2).

January 24, 2024

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