

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-24-90012

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In re Complaint of John Doe\*

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This is a judicial complaint filed by a federal prisoner against a district judge who presided over the complainant's criminal case and later denied his motion seeking the judge's recusal in a post-conviction proceeding under 28 U.S.C. § 2255.

The complaint alleges that the judge should have recused herself because of personal bias against the complainant. The complaint relies on the judge's alleged statements at sentencing that the case was the most "cruel and vicious" that the judge had seen, and that the complainant should "prepare to never see [his] son again." The complainant asserts that the latter statement "is a threat on [his] minor child's life and well being." The complaint also alleges that in the judge's rulings on recusal and the § 2255 motion, the judge "skipped over arguments" raised by the complainant. The complaint suggests that the failure to address all of the arguments, along with the judge's alleged threat towards the complainant and his child, "may be an indication that [the judge] is unable to effectively perform the duties entailed to a federal district judge." As a remedy, the complaint asks that the judge be removed from the complainant's case.

Insofar as the complaint challenges the judge's recusal ruling, the complaint must be dismissed as "directly related to the merits of a decision or procedural

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\*Under Rule 24(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the names of the complainant and the subject judge are not disclosed. Citations or references herein to a "Rule" refer to these Rules.

ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *see* Rule 4(b)(1) (misconduct does not include “an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”). The assertion that the district judge “skipped over arguments” is also merits-related and must be dismissed. *See In re Complaint*, Nos. 375, 378 (1st Cir. C.J. Apr. 28, 2004) (dismissing as merits-related allegations that judge failed to address many substantive legal issues raised).

The sentencing transcript, moreover, shows that the complaint takes the judge’s cited comment out of context. At the hearing, the judge told the complainant that because of the defendant’s “vicious and cruel” cyberstalking offense, the son’s mother and her family “may never let you see your son again and you’re going to have to come to peace with that.” The judge’s remark is not reasonably understood as a threat against the child’s life or well-being.

The complainant’s theory that the judge might be “unable to effectively perform the duties” of a judge is purely speculative. The complaint provides no evidence of a “disability” within the meaning of Rule 4(c)—i.e., “a temporary or permanent impairment, physical or mental, rendering judge unable to discharge duties of office, including substance abuse, inability to stay awake during court proceedings, or impairment of cognitive abilities rendering judge unable to function effectively.” That aspect of the complaint is subject to dismissal as frivolous or lacking sufficient evidence to raise an inference that disability exists. *See* Rule 11(c)(1)(C), (D).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton  
Chief Judge

Filed: May 15, 2024

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