

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-24-90040

In re Complaint of John Doe*

This is a prisoner's fourth judicial complaint against the district judge who presided over his criminal case.

As relevant, the record shows that in 2019, a grand jury charged that the complainant conspired to distribute fentanyl and controlled substance analogues including 4-FA, and that he distributed a mixture or substance containing fentanyl that resulted in the death of ten persons. After a hearing, the court granted the complainant's motion to proceed *pro se*. Appointed counsel remained in a standby capacity with the complainant's consent. The complainant filed a motion to dismiss the indictment, arguing that because 4-FA is not a controlled substance, intent to distribute 4-FA was insufficient to sustain a conviction under the Controlled Substances Act. The judge denied the motion, stating that a person can be guilty of a controlled substance crime even if he believed he was distributing an analogue rather than a listed drug. The judge observed that the government would have to prove that the complainant had the required intent and that 4-FA is an analogue at trial. The court concluded that the indictment accurately set forth "several offenses under both the [Analogue Act] and the [Controlled Substances Act], read together, and it correctly describes the elements of those offenses." The judge also rejected

*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.

several allegations regarding prosecutorial misconduct. The judge set a trial date for November 2021.

About five weeks before trial, the complainant filed a motion requesting a 90-day continuance to retain experts and review discovery materials in what he said was a complex case. The judge granted the motion. A new trial date was set in March 2022. In January 2022, the complainant again moved for a 90-day continuance, citing the same reasons as before. The judge denied the motion because the complainant had been afforded over 14 months to prepare for trial—enough time to find an expert and review discovery materials. The court also found that another continuance would prejudice the government because the case involved witnesses and evidence from twelve States and the issuance of about 100 trial subpoenas.

A few days before trial, the judge denied four pending motions to dismiss filed by the complainant. The judge also granted the government's motion in limine barring the complainant from introducing evidence about the grand jury proceedings, and from arguing that he was innocent because the government could not prove the requisite criminal intent under the Controlled Substances Act. The judge had already found that the grand jury proceedings were proper, and that the complainant's legal interpretation was an incorrect statement of the law. The judge explained that the complainant could make arguments to the jury about the facts—for example, that he did not know he was distributing 4-FA, that 4-FA does not meet the definition of a controlled substance analogue, or that he did not know that the 4-FA that he distributed was intended for human consumption. A jury convicted the complainant, and the judge sentenced him to thirteen life terms of imprisonment.

The judicial complaint asserts that (1) the judge's "deeply rooted bias negatively affected her perception of [him], and severely distorted that reality," (2) the judge "perceived any defense of himself equated to an expression of his lack of empathy for the overdose victims," who were professionally accomplished and "of the white community," (3) the prosecution "weaponized" the biographical

information of the deceased victims at trial “to perpetuate [the] perception of [the complainant] as a predator targeting the White and Privileged” and to achieve “sympathy verdicts,” and the judge “actively enabled every step of this objective,” (4) the judge wrongly granted the government’s pretrial motion in limine, which barred him from presenting the defense that the indictment had been constructively amended and that he was innocent because he intended only to distribute 4-FA, not a controlled substance, (5) the judge committed misconduct by “entertaining and enabling the prosecution despite her absence of jurisdiction” where the charges did not include Analogue Act violations, (6) the judge “defiantly asserted” during a pretrial status conference that she was not obliged to answer the complainant’s question about whether actions would qualify as constructive amendments to the indictment, (7) the judge “forced” the complainant, a pro se defendant, to trial about a year after his arraignment, and (8) the judge exhibited “willful indifference of the government’s misconduct” and “committed, wholeheartedly, to simply avenge the deaths of many.”

Much of the judicial complaint challenges the judge’s orders, rulings, and other decisions, and therefore must be dismissed as “directly related to the merits of a decision or procedural 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”). To the extent that the complaint alleges that the judge was biased in making her decisions or engaged in hostile behavior towards the complainant, the record shows that such allegations are “frivolous,” or “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D).

The transcript of pretrial status conference cited by the complainant shows no cognizable misconduct by the judge. The complainant questioned why the judge was not dismissing the indictment, and the judge responded that she had “ruled on these issues countless times in this case.” The complainant responded that the judge was “disregarding Supreme Court precedent.” The judge stated, “You and I are going to agree to disagree.” The complainant expressed that he felt that he was being treated

unfairly by the government and by the court. The judge responded that she took an oath to ensure him a fair trial, and that was her only goal. The judge did not treat the complainant in a “demonstrably egregious and hostile manner.” *See* Rule 4(a)(2).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton
Chief Judge

Filed: September 19, 2024
