

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-24-90052

In re Complaint of John Doe*

This is a judicial complaint filed by an attorney against a district judge. The attorney practiced law in the judge’s district and alleges that the judge engaged in judicial misconduct by delaying sentencing proceedings in three or more criminal cases.

The complaint recounts information about three criminal cases. In the first case, a presentence report and sentencing memorandum were filed by April 30, 2020, but the defendant was still awaiting sentencing as of June 2024. In the second case, the defendant filed a sentencing memorandum in November 2019 and was sentenced in February 2023. In the third case, the defendant filed a sentencing memorandum in June 2019 and was sentenced in June 2022. The complaint alleges that the delay between the filing of sentencing memoranda and sentencing hearings appears to be a violation of Canon 3(A)(5) of the Code of Judicial Conduct, which provides that “[a] judge should dispose promptly of the business of the court.”

The subject judge was invited to reply to the complaint and provided a written response. *See* Rule 11(b). The judge provided a detailed explanation regarding the three cases described in the complaint. All three cases were pending during the

*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.

COVID-19 pandemic, and the administrative burdens of managing the pandemic caused delay that ordinarily would not occur. The court also was required to balance safety concerns with efforts to administer the business of the courts during the height of the pandemic.

In the first case, where the complaint alleges that a sentencing memorandum was filed by April 2020, the judge explained that the pandemic effectively shut down the district court from March 2020 until May 2021. The judge recounts that the presentence report filed in March 2020 designated the defendant as an armed career criminal with a significant sentencing enhancement. The defendant's sentencing memorandum, filed April 30, 2020, argued that he did not qualify as an armed career criminal because two of his prior offenses were committed on the same occasion. The judge explains that sentencing was delayed because cases concerning the sentencing enhancement "were working their way toward the United States Supreme Court." Once the Supreme Court decided *Erlinger v. United States* on June 21, 2024, holding that a defendant is entitled to have a jury determine whether prior offenses were committed on separate occasions, the defendant's case was set for sentencing and resolved on July 17, 2024. The docket does not show any request by the defendant to schedule a hearing at an earlier date.

In the second case, a presentence report was filed in September 2019, and the defendant filed objections. The judge reports that the objections required review of an encrypted disc containing child pornography, but the disc furnished by the government in January 2020 would not play on the court's equipment. In March 2020, the COVID-19 pandemic effectively shutdown the courthouses until May 2021. The judge explains that a new disc was not received from the government until August 2022. At that point, the judge reviewed the evidence and scheduled a sentencing hearing for January 31, 2023. The defendant then reached certain stipulations with the government and withdrew his objections to the presentence

report. The probation office prepared a revised presentence report, and sentencing was rescheduled for and completed on February 13, 2023.

In the third case, a final presentence report was filed on April 30, 2019, and a sentencing memorandum was filed on June 3, 2019. The judge reports that before the defendant was sentenced, the government determined in September 2019 to move for a reduction in sentence based on the defendant's provision of substantial assistance to the government. The government filed the motion on January 13, 2020, but the pandemic arose in March 2020 and effectively shut down the courts until May 2021. The judge explains that the court contacted the defendant several times to inquire whether he would be willing to conduct a sentencing hearing by videoconference, but the defendant declined.

The courthouses reopened in May 2021, but the judge reports that most cases were still handled by videoconference, and the defendant continued to decline that mode of hearing. The courthouses eventually reopened completely for in-person hearings, and the defendant's sentencing was scheduled for February 22, 2022. At that point, however, the defendant filed additional objections to the presentence report. Five days before the scheduled hearing, the defendant's counsel moved to withdraw from the case on the ground that counsel had "become aware of a conflict in representation." The court appointed new counsel for the defendant and rescheduled the hearing for May 3, 2022. On April 4, 2022, the second attorney moved to withdraw, and the court appointed a third attorney for the defendant. On April 29, 2022, the defendant filed new motions that required attention, and the judge resolved them on May 23, 2022. The judge rescheduled sentencing for June 29, 2022, and imposed sentence on that date.

The judge's response to the judicial complaint further explained that twenty criminal cases assigned to the judge were awaiting sentencing at the time of the response. Four cases were on hold by agreement of the parties because the

defendants were scheduled to testify during trials of other defendants. The judge reported that the other sixteen cases were all scheduled for sentencing hearings within the next month.

“Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Rule 4(b)(2). There is no allegation of improper motive. The complaint might be understood to allege habitual delay in a significant number of unrelated cases.

Having reviewed the subject judge’s explanation and the dockets in the three cited cases, I conclude that there is insufficient evidence to raise an inference that the judge committed cognizable misconduct. All three cases were pending during the COVID-19 pandemic. The unusual circumstances of that time account for a substantial portion of the postponements; delays in that context cannot fairly be described as “habitual.” In the first case, one might question delaying a sentencing for a lengthy period based on the potential for a future decision of the Supreme Court. But the cited decision did benefit the defendant at sentencing, where the court determined that he was not an armed career criminal in light of the *Erlinger* ruling. And there is no indication on the docket that the defendant objected to the delay. The second case involved difficulty accessing evidence that was unique to the case and caused some delay, although perhaps the judge could have resolved the evidentiary problem more quickly. The third case was delayed by events outside control of the judge: two substitutions of defense counsel and the filing of new motions by the defendant’s third attorney. In all three cases, the defendants were entitled to credit toward the service of their sentences for time served between conviction and sentencing, 18 U.S.C. § 3585(b)(1), and the complaint does not allege that the defendants were prejudiced by delay.

Under all of the circumstances, the three cases cited are insufficient to establish that the judge is responsible for “habitual delay in a significant number of unrelated cases.” Insofar as there was inordinate delay, moreover, the judge has taken voluntary corrective action to ensure that all pending criminal cases that could be resolved were scheduled for sentencing hearings within thirty days of the judge’s response to this complaint. *See* Rule 11(a)(2).

For these reasons, the judicial complaint is dismissed. Alternatively, the proceeding is closed on the ground that voluntary corrective action has been taken.

/s/ Steven M. Colloton
Chief Judge

Filed: April 8, 2025
