

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-23-90103

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In re Complaint of John Doe<sup>1</sup>

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

The judicial complaint makes three allegations against the district judge. First, it alleges that the complainant has a “reasonable belief” that the district judge “ordered the U[.]S[.] Marshals to confine [the complainant] to an isolation cage due to [the complainant] assisting other prisoners with legal paperwork.” In support of this “reasonable belief,” the judicial complaint maintains that when the complainant “was trying to explain . . . that [the complainant] was being abused by the U[.]S[.] Marshals,” the district judge “put [a] hand up and told the complainant to ‘be quiet,’ ‘shut up.’” Second, the judicial complaint alleges that the district judge “engaged in improper ex parte communications” with the U.S. Marshals by “order[ing] them to punish complainant by confining [the complainant] to a medical isolation cage.” Finally, the judicial complaint alleges that the complainant has a “reasonable belief” that the district judge “is purposely delaying ruling on motions that the [complainant] files, because [the judge] harbors animosity towards complainant.” According to the complainant, the district judge delays ruling on the complainant’s motions in retaliation (1) for the “civil cases that [the complainant] has filed against other probation officers and law enforcement officer” and (2) for the complainant

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<sup>1</sup>Under 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.

“help[ing] other state and federal pretrial detainees file lawsuits against law enforcement, including the U[.]S[.] Marshals.”

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). Contrary to the complainant’s allegations, the district judge never told the complainant to “be quiet” or “shut up” during sentencing. Instead, the district judge afforded the complainant the opportunity to speak prior to imposing sentence. The complainant’s statement constitutes almost nine pages of the sentencing transcript. After the complainant’s attorney “interject[ed]” to make a brief point, the complainant began speaking again. The district judge replied, “Okay. . . . [E]nough. I do understand the statement that you’re making. We don’t have to go over it again and again and again.” The complainant responded, “Thank you for listening, Your Honor.” At another point, the complainant inquired whether the district judge could “speak to the U.S. Marshals” about the complainant calling family members. The district judge then asked the Marshal, “Will [the complainant] be permitted to call . . . family?” The Marshal responded, “[The] complainant has to have money on [the] books to make phone calls. None of [the complainant’s] family is putting money on [the] books, so [the complainant] can’t make phone calls.” The Marshal advised the district judge that if the complainant provided names and numbers of family members, the Marshal would call them and request that they send money to the jail. The complainant responded, “Oh, come on, man. I’m tired.” In reply, the district judge stated,

[H]onestly, that’s as much as is going to happen here today based upon your statements to me. Okay. And if that’s not enough for you, what is it that you want me do . . . ? If you want me to just say I’m just going to believe anything that [the complainant] tells me and start dictating to the marshals where you’re put, I’m not going to do that.

The docket currently shows seven pending motions in the complainant's case: (1) pro se motion to replace probation officer (filed 5/30/23); (2) pro se motion for the return of property (filed 9/22/23); (3) pro se for U.S. Marshal to pay medical bill (filed 9/25/23); (4) amended pro se motion to replace probation officer (filed 9/25/23); (5) pro se motion to modify conditions of release (filed 9/26/23); (6) pro se motion for discharge from supervised release pursuant to 18 U.S.C. § 3583(e)(2) (filed 9/26/23); and (7) pro se motion to modify conditions of release (filed 11/01/23).

Having reviewed the record, I conclude that to the extent the judicial complaint alleges that the district judge retaliated against the complainant by ordering the U.S. Marshals to confine the complainant in an isolation cage and engaged in ex parte communications with the U.S. Marshals, 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). As to the delay allegations, "[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." J.C.U.S. Rule 3(b)(2). The record does not support a finding of improper motive or habitual delay.

Accordingly, the judicial complaint is dismissed.

January 22, 2024

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