

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-14-90014

In re Complaint of John Doe¹

This is a judicial complaint filed on May 29, 2014, by a civil litigant against the United States district judge who presided over a civil action where the complainant appeared as a defendant.

The complainant states that at a motion hearing called to determine whether to hold the complainant in contempt of a district court order, “[i]mmediately up[on] entering the courtroom, [the district judge] began taunting yours truly with ph[r]ases similar to: ‘We have handcuffs that will fit you, . . .’ ‘You’re going to look good in an orange jumpsuit’ [and] ‘The marshals will be here shortly.’” The complainant further alleges, “[the district judge] made similar taunts at least twice more during the hearing, and, of course, I was held in contempt.” The complainant, an attorney himself, states, “it is my professional opinion that [the district judge’s] conduct was prejudicial to the effective and expeditious administration of the business of the court. Specifically, [the district judge] treated a litigant and his attorney in a demonstrably egregious and hostile manner.” The complainant “would urge [me] and the judicial council to review the entire record for bias, prejudice, impropriety or the appearance of impropriety in the absence of impropriety-in-fact.” The complainant wonders if there was “a standing order for the court clerks to prepare memoranda, orders and judgments that argue for, and rule in favor of Plaintiff regardless of the issue.”

¹Under 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 judge complained about are to remain confidential, except in special circumstances not present here.

I have obtained and read a transcript of the contempt hearing, as well as a response from the district judge. The complainant's description of the district judge's remarks are reasonably accurate. The district judge used colorful language with the complainant, both before and after the complainant testified, regarding a possible jail sentence.

As the complainant points out, “[c]ognizable misconduct” by a judge “is conduct prejudicial to the effective and expeditious administration of the business of the courts” and “includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner.” Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(1)(D). In this case, the district judge minced no words as to what penalty the complainant faced if he continued to disregard the district judge's orders. As the district judge describes it, his words “may have been harsh,” but were warranted—saying, “The language and tone I employed . . . were called for under the circumstances to convey the seriousness of the situation” and “were necessary . . . to communicate my displeasure that he had deliberately ignored . . . an order he voluntarily entered into with knowledge that he would not be able to comply with its terms.” The complainant undoubtedly did not like what the district judge had to say, as much as his way of saying it. After careful review of the hearing transcript, I find the district court's remarks were not “demonstrably egregious and hostile” within the meaning of the Judicial Conduct Rules, nor did they interfere with the administration of the contempt hearing. J.C.U.S. Rule 3(h)(1)(D).

In addition, the complainant's allegations against the district judge must be dismissed because they directly relate to the merits of the judge's decisions and are therefore not proper subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B). “An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive . . . or improper

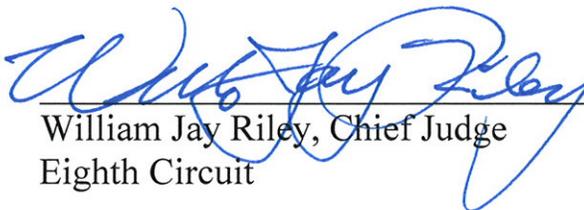
conduct in rendering a decision or ruling, . . . the complaint is not cognizable to the extent that it attacks the merits.” J.C.U.S. Rule 3(h)(3)(A).

Because of the special need to protect judges’ independence in deciding what to say in an opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge’s language in a ruling reflected an improper motive. If the judge’s language was relevant to the case at hand[,] then the judge’s choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.

Commentary on J.C.U.S. Rule 3. Here, the district judge’s colorful remarks, addressing a possible penalty for civil contempt, were relevant to the contempt hearing and thus “presumptively merits-related and excluded.”

The complaint is dismissed. See J.C.U.S. Rule 11(c)(1)(A).

October 15, 2014



William Jay Riley, Chief Judge
Eighth Circuit