

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-15-90028

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

This is a judicial complaint filed on August 17, 2015, by a federal prisoner against the United States district judge who presided over complainant's criminal case. Complainant begins his complaint by alleging his attorney "did not defend [him] in this case. Clients have a right to expect a high level of professional services from their lawyer which they have a code of ethics, Rules of Professional Conduct." Complainant also asserts "the record will show prosecutor misconduct model rule 3.8 police misconduct because the evidence was destroyed 6 months before my home was under investigation so how did they even get a superseed [sic] indictment to charge [complainant] and [his] co-conspirator, those was false charges against [them]." Complainant complains "they are still charging [him] with [an amended] count and in two or 3 more count[s] which the CI were not in court that is a violation of [his] 6th amend[ment] Righ[t] [sic] to confront the accuser's [sic] and [his] 8th amendment Right." In complainant's view, "the government has omitted [sic] they violated [his] constitutional rights to a fair trial and [his] co[un]sel to ineffective assistance of counsel."

Complainant's allegations of ineffective assistance of counsel, prosecutorial misconduct, false allegations by the police, and other improper or unethical conduct by anyone other than the district judge are all outside the judicial complaint review

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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 (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

process, which only applies to federal judges. See 28 U.S.C. § 351(a), (d)(1); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4; E.C. Rule 1(c).

As to the district judge, complainant—falsely claiming his complaint does not “concern the behavior of the judge . . . in a particular lawsuit”—states, “The judge in my case was ask [sic] bye [sic] my attorney could we have the only two African American’s [sic] on the jury panel and [the district judge] said ‘No’, [sic] ask the prosecution,’ and he said ‘No.’” Complainant “feel[s] . . . that was a violation of [his] sixth amendment rights.” Complainant further complains his indictment was insufficient and the district judge “denied [his] speedy trial motion when the prosecution admits to violating [complainant’s] speedy trial rights.” According to complainant, a judge “always errors [sic] when he/she abuses their discretion where a [j]udge exercise[s] his authority to help the prosecution at trial in which its case[] [sic] is going badly, when malicious prosecution is being use[d] to step over the boundaries of proper conduct and into unethical territory, the government has a duty to own up to it.”

The vast majority of complainant’s allegations against the district judge must be dismissed because they are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); see 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.” J.C.U.S. Rule 3(h)(3)(A).

Complainant’s remaining allegations are “frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rules 11(c)(1)(C), (D). Complainant asks that I review the relevant transcripts and investigate his complaint. I have done that. And that record does not support complainant’s claims of misconduct. For example, complainant states he “ask[ed] to address the court and [the district judge] made a

statement like have you been to law school[?] [Complainant] said no and [the judge] said he didn't want to talk to [complainant], which was unprofessional.” The actual exchange follows.

COUNSEL: [Complainant] has some issues with the sufficiency of the pleadings, the indictment.

THE COURT: Then he can discuss that with you. I don't need – I'm sorry, Mr. [complainant], I don't allow litigants to discuss the pleadings and how you're charged and why you're charged, if that's what you're talking about, or the language. Have you ever gone to law school?

DEFENDANT: Who?

THE COURT: You.

DEFENDANT: No.

THE COURT: But you want to discuss the pleadings and how you were charged?

DEFENDANT: No. I'm just talking about the evidence in the indictment. That's all.

COUNSEL: He's worried we have a pending [Alleyne v. United States, 570 U.S. \_\_\_\_, 133 S. Ct. 2151 (2013),] violation.

THE COURT: You can raise that at the end of trial. I'm not going to take it up. I'm sorry. It will be denied.

The district judge's statements and demeanor are neither unprofessional, nor “[c]ognizable misconduct.” J.C.U.S. Rule 3(h)(1).

The complaint is dismissed.

September 29, 2015



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William Jay Riley, Chief Judge  
Eighth Circuit