JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-16-90009

In re Complaint of John Doe[1]

This is a judicial complaint filed on January 22, 2016, arising out of two occasions in which the complainant, an African-American attorney, appeared before a district judge. First, after the complainant, appointed under the Criminal Justice Act (CJA), arrived late for a change of plea hearing—reportedly because he had been filing a motion for his client—the district judge asked the complainant's client if the complainant was representing him competently. The client said he was, but the complainant took offense at having his competency questioned by the district judge, and the complainant reports he "immediately resigned from the case" and left his client unrepresented at the hearing. The complainant "immediately" thereafter told the Federal Public Defender's office "to never appoint [the complainant] to a CJA Panel case with [the district judge] again."

Second, about a week and a half later, the complainant appeared as retained counsel for a criminal defendant who, according to the complainant, thought his white court-appointed attorney was incompetent. The court-appointed attorney moved to withdraw. Explaining trial was scheduled to start in a week and referring to the court-appointed attorney's "knowledge of the case and preparation for the trial," the district judge denied the motion to withdraw and directed the court-appointed attorney to "serve as stand-by counsel during trial." The complainant perceived that ruling as an

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[1]Under Rule 4(f)(1) of the Eighth Circuit Rules Governing Complaints of Judicial Misconduct and Disability (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

insult, because he thought it implicitly equated his representation "to a pro se criminal defendant who decides to represent himself in court"—the usual reason for appointing standby counsel—and moved to withdraw from the representation, which the district judge granted.[2] The complainant also contrasts this incident with his previous case and takes issue with the fact that the district judge did not ask about the court-appointed attorney's competency, despite the client's dissatisfaction and what the complainant sees as deficiencies in the attorney's performance.[3]

The complainant accuses the district judge of "discriminat[ing] against [him] based upon [his] race as an African American Attorney." Complainant also suggests the district judge "retaliat[ed]" against him for allegedly successfully defending another "former African American Attorney" against a bar complaint the district judge filed seven years before. In supplemental filings, the complainant mentions that the district judge questioned whether the complainant should remain on the panel for appointments under the CJA, and "[n]ow, [the complainant] must appear in front of the Federal CJA Panel to answer questions that have not been asked." And the complainant speculates the district judge was "stressed" because of personal matters, so she "punish[ed] or lash[ed] out at people [she] do[es] not like such as blacks or people [she] believe[d] ha[d] done [her] wrong," including the complainant. Complainant concludes the district judge's "racist and retaliatory actions against [him] have given the public the impression [he] [is] not a competent attorney"—an impression he counters by attaching a newspaper article and two unsourced reports purportedly describing some of his accomplishments.

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[2]Contrary to the complainant's claim that the brief he filed in support of his motion to withdraw "was stricken from the court record by [the district judge]," the brief, with exhibits, is currently listed and viewable on the district court docket.

[3]Later, this attorney was allowed to withdraw fully, new CJA counsel was appointed, and the trial was continued.

The complainant's allegations the district judge had improper reasons for treating him as she did—whether racism, revenge, or emotional strain—are unsupported except by reference to her rulings and decisions, which generally are treated as "directly related to the merits of a decision or procedural ruling" and therefore not properly addressed through a judicial complaint. 28 U.S.C. § 352(b)(1)(A)(ii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B). Asking a defendant whether the defendant believes his or her counsel is competent or whether the defendant is satisfied with his or her counsel's representation is a standard question in most criminal cases at some point, often during a change-of-plea hearing, as here. And the district judge's actions in the second incident of counsel withdrawal arose under obviously different circumstances and the parties involved were not at all similarly situated, undermining the complainant's proffered comparison. The complainant's conjecture as to the district judge's motives is wholly unsubstantiated. See 28 U.S.C. § 352(b)(1)(A)(iii) (calling for dismissal of complaints that are "frivolous" or "lacking sufficient evidence to raise an inference that misconduct has occurred"); J.C.U.S. Rule 11(c)(1)(C), (D).

Because the complainant refers to "the segregated legal community in which [he] practice[s]" and claims "the white attorneys had no problem with the racist treatment [he] received because as Danny DeVito stated about white people, 'We're a bunch of racists,'" I add that the judicial-complaint procedure is limited to United States judges and does not apply to attorneys or other people involved with the federal courts. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

February 26, 2016

William Jay Riley, Chief Judge
Eighth Circuit