

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-16-90018

JCP No. 08-16-90019

JCP No. 08-16-90020

In re Complaint of Jane Doe¹

ORDER

This is a judicial complaint filed against three United States Circuit Judges.

Following Complainant's dismissal from her position with a public housing authority (Authority), she filed suits against the Authority and its executive director. The district court consolidated the two cases, and they proceeded for trial before a jury on Complainant's race and sex discrimination claims and her First Amendment retaliation claim. At the close of Complainant's evidence, the Authority moved for judgment as a matter of law on all claims under Rule 50 of the Federal Rules of Civil Procedure. The district court denied the motion with respect to the race and sex discrimination claims and took the motion on the First Amendment retaliation claim under advisement. Following the close of the evidence, the district court granted the Authority's renewed Rule 50 motion of the First Amendment retaliation claim. Following the jury's rejection of the sex and race discrimination claims, Complainant filed a post-trial motion seeking a new trial and reconsideration of the district court's grant of judgment as a matter of law. The district court denied the motion, whereupon Complainant filed an appeal, raising only the issue of the grant of the

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 judicial officer complained against are to remain confidential, except in special circumstances not here present.

dismissal of her retaliation claim. The Authority filed a motion to dismiss the appeal for Complainant's failure to provide a complete transcript of the evidence, as required by Rule 10(b)(2) of the Federal Rules of Appellate Procedure. The motion was taken with the case. Following oral argument, the appeal was dismissed on July 22, 2013, for Complainant's failure to provide a record that would enable the court to conduct a meaningful review of the district court's findings with respect to its ruling on Complainant's First Amendment retaliation claim. Complainant's petition for rehearing en banc was denied, as was her petition for a writ of certiorari and her petition for rehearing of the denial of the petition.

Among other things, Complainant alleges that the panel erred in dismissing the appeal on the basis of Complainant's failure to comply with the requirements of Fed. R. App. P. 50(b)(2). This, of course, is a merits-based argument and will be dismissed as such. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B).

The complaint also sets forth unsupported allegations regarding the manner in which the district court ruled during the case. To the extent that they relate to the merits of those rulings, those allegations will likewise be dismissed as such.

To the extent that those allegations raise claims of judicial improprieties, they will be dismissed as "frivolous [and] lacking sufficient evidence to raise an inferences that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); J.C.U.S. Rules 11(c)(1)(C)(D).

The complaint alleges that the presiding judge of the panel that ruled on Complainant's appeal "is best friend" with counsel who presented the argument on behalf of the Authority and thus had a moral and legal responsibility to reveal this information to all parties and then recuse himself because "of an obvious conflict of interest, bias, and impartiality."

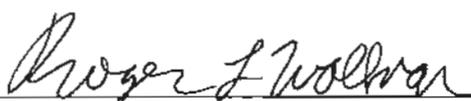
These allegations were presumably prompted by the presiding judge's comment near the conclusion of counsel's argument that, "You and I have been friends for a long time," followed by a question about the manner in which the district court had dealt with the fact that counsel may have somehow been a witness during the trial. Counsel replied that he had never been deposed nor listed as a witness, and nothing was further said about the matter.

To the extent that this allegation charges the presiding judge with judicial misconduct, it is "frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred," and will be dismissed as such. 28 U.S.C. § 352(b)(1)(A)(iii); J.C.U.S. Rules 11(c)(1)(C), (D).

Also dismissed, and for the same reason, is the allegation that the verdict should be overturned "due to miscarriage of justice, fraud upon the court and justice corruption."

The complaint is dismissed.

March 7, 2016



Roger L. Wollman, Circuit Judge
United States Court of Appeals
for the Eighth Circuit