

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90001

In re Complaint of John Doe¹

This is a judicial complaint filed December 29, 2016, by an inmate against the United States district judge presiding over the complainant's criminal trial.

The complainant contends the district judge “bolstere[d] [his defense attorney’s] character as ‘a vigorous defense attorney’ during the ‘JURY SELECTION PROCESS.’” During voir dire, one potential juror stated he remembered a previous trial for which he was a juror because “the defense attorney didn’t seem to do anything for the defendant.” The district judge assured the potential juror she had “had [the defense attorney] around” and the defense attorney is “a vigorous defense attorney and you can make sure that he will have something to say about this.” The complainant contends this statement violated the American Bar Association’s (ABA) Model Code of Judicial Conduct Rule 3.3:² “A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding.” According to 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 judge complained about are to remain confidential, except in special circumstances not present here.

²The complainant does not directly cite to the ABA’s Model Code of Judicial Conduct, but the language he cites directly matches the language of that code. That code is advisory and aspirational, and not controlling. The complainant’s cited language also mirrors that of state judicial codes, which do not apply to federal judges.

complainant, “[t]hese powerful comments coming from a federal judge with the full weight [sic] and prestige of the federal judicial office had an overwhelming cascading effect on the jury that gave them the distinct impression that [the defense attorney’s] representation of [the complainant] would be constitutionally adequate.” The complainant asserts this “placed the prestige of the United States Government behind [his defense attorney] as being a vigorous defense attorney.”

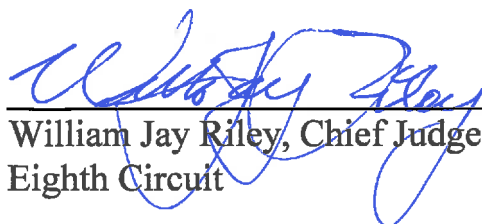
The complainant also alleges the district judge “eroded public confidence in the judiciary by improper comments and conduct that creates [sic] the appearance of impropriety” because “the courts [sic] comments as noted above would in fact create in reasonable minds a preception [sic] that the Court [district judge] did violate the plain language” of the cited code. The complainant further asserts the district judge “failed to disqualify herself from [his criminal proceeding] when it was mandatory.” According to the complainant, the complainant “had filed many complaints with the court against [his defense attorney]” and, because of these complaints, “their [sic] can be no doubt that [the district judge] had personal knowledge of facts that was [sic] in dispute in the proceeding and she failed to disqualify herself.” The complainant claims he “told the jury [he] was being railroad by [his] attorney . . . and by [his] defense investigator” and the district court should have disqualified herself because of her personal knowledge of the facts underlying this argument. The complainant requests “[a] PROMPT full investigation.”

The complaint must be dismissed because it “alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts.” Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(A). Contrary to the complainant’s assertions, the district judge’s comments about the complainant’s defense attorney did not amount to the district judge “VOUCH[ing] for the character of a person in a legal proceeding.” The district judge merely was distinguishing the current trial from the potential juror’s previous jury experience. Even if the district

judge's comments "gave [the jury] the distinct impression that [the defense attorney's] representation of [the complainant] would be constitutionally adequate," these comments do not "raise an inference that misconduct has occurred." J.C.U.S. Rule 11(c)(1)(D). To the extent the complaint alleges the district judge failed to disqualify herself from the proceedings, it must be dismissed because "[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A); see also 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B).

The complaint is dismissed.

March 9, 2017



William Jay Riley, Chief Judge
Eighth Circuit