

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90037

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate against the United States district judge who presided over the inmate's criminal trial. The judicial complaint alleges that the district judge showed favor to a lawyer who labored under a conflict of interest and represented the complainant during trial. According to the judicial complaint, the complainant's lawyer and the complainant's "previous lawyer had a very close relationship. . . . They both represented a coconspirator on a different matter where they shared [a] prof[itu]ity." The complainant alleges that the district judge "cover[ed] for [the lawyer's] conduct" and "refused to rule on the issue [of the conflict of interest]." The complainant admits that the district judge appointed new counsel to represent the complainant at sentencing.

The record shows that the district judge held a status conference on the issue of the complainant's claim that his lawyer's relationship with his former lawyer presented a conflict of interest. The district judge made clear that the sole issue was who would represent the complainant at sentencing; the district judge would not determine whether a conflict of interest existed for purposes of a subsequent 28 U.S.C. § 2255 petition. The district judge informed the complainant such issue would be adjudicated "[a]t a later time." The district judge determined that new counsel was appropriate in light of the serious charges that the complainant made against his

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.

lawyer. The district judge made no finding of a conflict of interest that allegedly existed during trial.

The complainant’s allegation that the district judge showed favoritism toward his allegedly conflicted trial counsel “lack[s] sufficient evidence to raise an inference that misconduct has occurred”; accordingly, the allegation must be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C),(D). In addition, to the extent the complainant challenges the district judge’s (1) order appointing new counsel, and (2) refusal to rule on the conflict-of-interest issue, such challenges are “directly related to the merits of a decision or procedural ruling” and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rule 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related.”). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

May 31, 2018



Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit