

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90026

In re Complaint of John Doe¹

On June 10, 2019, a judicial complaint was filed against a United States district judge. The complainant alleges that the district judge (1) denied as moot one of the plaintiff's motions after engaging in ex parte communications with the defendant's counsel; (2) assisted the defendant in protecting its interests and criminal activities by granting its motion for entry of a protective order; (3) falsely claimed that the complainant refused to participate in arbitration²; (4) denied the complainant's motion to recuse, despite the judge's favoritism toward the defendant; and (5) "subjected [the complainant] to a barrage of insults and threats" at a pretrial conference hearing.

With regard to the pretrial conference hearing, the complainant alleges that the district judge insulted him, threatened him, acted outrageously, and embarrassed the legal community. In support of these allegations, the complainant alleges that the district judge "refused to pronounce [the complainant's] name correctly"; sarcastically apologized about mispronouncing the complainant's name and continued mispronouncing it; made clear to the complainant that the judge "was going to ignore the Appeals court ruling and disregard it[s] import to [the complainant's] case"; made clear that the judge was going to favor the defendant and "overrule [the] jury's verdict

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.

²The judicial complaint says "arbitration," but the complainant is referring to court-ordered mediation.

if it did not go in favor of the defendant”; and interrupted the complainant, but then threatened contempt against the complainant for interrupting the judge.

I have obtained and read a transcript of the pretrial conference hearing.³ The complainant’s description of the district judge’s remarks is not accurate. First, at the beginning of the hearing, the district judge apologized for mispronouncing the complainant’s name and indicated that the judge would “work on that” when the complainant informed him of the proper way to pronounce the name. Thereafter, the district judge acknowledged on one other occasion mispronouncing the complainant’s name and immediately apologized.

Second, the district judge never indicated an intent to ignore the appellate ruling; instead, the district judge explained to the complainant that the ruling was not a judgment against the defendant but instead a conclusion that fact issues barred summary judgment on three of the complainant’s claims. The district judge acknowledged that these three claims were “still alive and kicking.”

Third, the record reflects that the complainant did, in fact, interrupt the district judge on *multiple* occasions. In response, the district judge reminded the complainant of the court rules and that a failure to follow those rules could result in being held in contempt of court. When the complainant continued interrupting the district judge, the district judge advised the complainant that “[i]f you don’t be quiet when other people talk, you will be in jail tonight.” The district judge asked the complainant to “slow down” and stated, “I’ll give you a chance to talk. I promise you you’ll have a chance. Contempt—once you walk in here, there’s a contempt thing.” The district judge then allowed the complainant to proceed with his argument. Thereafter, the complainant again attempted to interrupt the district judge, who then stated, “Hold on. Let me finish. Everybody’s—she’s got to wait her turn and you’ve got to wait your

³See Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b).

turn. That's the way it works here. This court reporter is really good but she can only write down one at a time." Despite the district judge's repeated warnings, the complainant persisted in interrupting the district judge, resulting in the district judge again asking the complainant to "[l]isten" and assuring the complainant of receiving "a chance to talk." Ultimately, the complainant was not held in contempt despite his repeated interruptions of the district judge.

Fourth, the district judge did not say it would overrule the jury's verdict if the defendant did not prevail; instead, the district judge pointed out deficiencies in some of the elements of the complainant's claim, which would result in a directed verdict if not proven at trial.

Finally, the district judge never falsely claimed that the complainant refused to participate in mediation. Instead, the district judge acknowledged that mediation was unsuccessful because the complainant admittedly would not sign a nondisclosure agreement. Following the remand, the district judge had ordered the parties to participate in mediation. This mediation was unsuccessful. At the pretrial conference hearing, the complainant stated, "I'm still amenable to [mediation] on the matters, but I'm not going to have any rules put on the [mediation]."⁴ The district judge responded, "I think that's the wisest thing you have said so far because I've done these train wrecks before, and when people leave here, they owe the court costs" Thereafter, the complainant reemphasized a desire to mediate but with no conditions. The court responded:

I'm not going to waste the time of a mediator Don't get me wrong. I'm not going to bring these people up here. You're going to meet with them. They're going to say, Here's our offer and you will have to sign some things to get the offer probably; but other than that, that's up to you. But you've already wasted our time on that. In my opinion, it was

⁴The complainant incorrectly used the word "arbitration" instead of "mediation" during the hearing.

a complete—we pay these people money to help people resolve cases. They're very good at it. I'm not going to drag them in on this case.

The complainant replied, “Well, I don't think it was very fair that I would have to sign a blanket nondisclosure agreement” The court then explained to the complainant that the parties are prohibited from discussing settlement offers in front of the jury and “[t]hat's what this nondisclosure was about that you're fussing about.” The court acknowledged that the complainant “misunderstood it.”

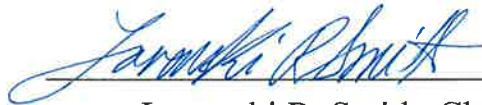
“Cognizable misconduct” by a judge “is conduct prejudicial to the effective and expeditious administration of the business of the courts” and includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner.” J.C.U.S. Rule 4(a)(2)(B). Overall, the transcript reflects that the district judge treated the complainant respectfully and fairly. After careful review of the hearing transcript, I conclude that no reasonable dispute exists, *see* J.C.U.S. Rule 11(b), that the district court's remarks were “demonstrably egregious and hostile” within the meaning of the Judicial Conduct Rules. J.C.U.S. Rule 4(a)(2)(B). And they did not interfere with the administration of the pretrial conference hearing. *Id.* In addition, the transcript does not support the allegations set forth in the judicial complaint concerning the district judge's conduct at the pretrial conference hearing.

The complainant's remaining allegations against the district judge are unsubstantiated and are directly related to the merits of the district judge's decisions. The complainant has provided no evidence to support the claim that the district judge, in ruling on certain motions, engaged in *ex parte* communications with the defendant's counsel, assisted the defendant in protecting its interests, or showed favoritism toward the defendant. *See* 28 U.S.C. § 352(b)(1)(A)(iii) (stating that a chief judge may dismiss a judicial complaint upon determining that it “lack[s] sufficient evidence to raise an inference that misconduct has occurred”); *accord* J.C.U.S. Rule 11(c)(1)(D). In addition, the complainant's allegations against the district judge must be dismissed because they directly relate to the merits of the

judge's decisions and are therefore not proper subjects of a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B); J.C.U.S. Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse. If the decision or ruling is alleged to be the result of an improper motive, *e.g.*, a bribe, *ex parte* contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it calls into question the merits of the decision.”)

The complaint is dismissed. *See* J.C.U.S. Rule 11(c)(1)(A).

August 15, 2019



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