JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-20-90002

In re Complaint of John Doe[1]

This is a judicial complaint filed by a federal inmate against the United States district judge who presided over the complainant's criminal case.

The judicial complaint alleges the district judge "did not provide [the complainant] with [the complainant's] constitutional right to counsel." According to the judicial complaint, the complainant notified the district judge "3 times before trial about ineffectual representation and 2 times post trial with no relief." The judicial complaint also asserts that the district judge "was not bound by the [G]uidelines" and that the district judge at sentencing "cracked a joke about a fool or idiot that represents himself has a fool or idiot for a client."

The record shows that in granting defense counsel's unopposed motion to continue the complainant's trial, the district judge noted that the complainant "indicated that he is not willing to sign a consent to continue the case, despite the request of defense counsel." The same day that the district judge granted the continuance motion, the district judge notified the complainant via memorandum that the district judge had forwarded the complainant's letters to defense counsel." The district judge instructed the complainant that "[a] defendant is not permitted to file motions when he is represented by a lawyer. The lawyer knows what is a viable

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[1]Under 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.

defense or a viable motion and what is not." The district judge urged the complainant to "[t]ry to work with your lawyer. He is trying to help you, not punish you. He has a great deal of experience that you do not have."

Almost a month later, the district judge notified defense counsel via memorandum that the complainant's refusal "to agree to any further continuance of the trial date so that [defense] counsel ha[s] a full opportunity to examine and consider the[] [requested] records may be 'shooting himself in the foot.'" The district judge failed to "understand what the strategy of the defendant may be, other than to bolster later claims of inadequate representation by his attorney." That same day, the district judge sent another memorandum to defense counsel concerning records the court received. In that memorandum, the district judge also directed defense counsel to "instruct his client to make no further telephone calls to [the district judge's] chambers. He has nothing to say about procedural matters, such as the court extending additional time to counsel. In short, he has an attorney to speak for him."

Following the complainant's conviction, the district judge sentenced the complainant. At sentencing, the district judge first addressed the complainant's request to represent himself at sentencing, stating:

> I explained to you during the trial what the problems are with representing yourself. As the old adage goes, the lawyer who represents himself has a fool for a client. And there's a lot of truth to that. Lawyers don't represent themselves, unless they're stupid, because they need independent counsel like anyone else does.

The complainant then asked, "Are you calling me stupid?" The district judge responded that "there's not much to be done legally." The district judge then granted the complainant's request to proceed pro se and appointed standby counsel. The complainant again asked the district judge, "Were you specifically calling me an idiot?" The district judge replied, "Idiot. No, I didn't make a comment like that." The

complainant clarified that the comment was about having a fool for a client, and the district judge replied, "Well that's my opinion that anyone who tries to represent himself is fool hearted." But the district judge made clear the district judge was "not calling [the complainant] an idiot." Prior to sentencing the complainant, the district judge acknowledged that the Guidelines are advisory.

To the extent the judicial complaint alleges that the district judge made a derogatory remark by calling the complainant an "idiot," the record shows that the district judge did not call the complainant an idiot but instead was advising the complainant about the dangers of representing himself. The allegation must be dismissed. *See*28 U.S.C. § 352(b)(1)(A)(iii) (stating that the chief judge may dismiss a judicial complaint "if the chief judge finds the complaint to be . . . frivolous [or] lacking sufficient evidence to raise an inference that misconduct has occurred"); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) 11(c)(1)(C), (D). To the extent the judicial complaint challenges the district judge's decisions concerning the complainant's defense counsel, continuances, and sentencing determination, such allegations are directly related to the merits of the district judge's decision and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 4(b)(1), 11(c)(1)(B).

The complaint is dismissed.

3/3, 2020

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