

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-18-90072

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In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by a non-party against the United States district judge who sentenced the non-party's relative. The judicial complaint alleges that, at sentencing, the district judge treated the defendant and the defendant's attorney "in a demonstrably egregious and hostile manner." *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(1)(D). Specifically, the judicial complaint alleges that, when the defendant "stated that he had given his life to God . . . , the Judge started ranting and belittling [the defendant] WITHOUT taking into consideration the [ ] years of [the defendant's] life where he was an upstanding citizen." The judicial complainant maintains that the district judge was "hostile and ruthless" toward the defendant, referring to the defendant as "a danger to society" and commenting that the defendant would not benefit from treatment. It also alleges that the district judge failed to consider the letters submitted on the defendant's behalf. And, it asserts that the district judge "would not let [the defendant's] attorney . . . talk."

A limited inquiry has been conducted of the allegations. *See* J.C.U.S. Rule 11(b) ("The chief judge . . . may obtain and review transcripts and other relevant documents."). The sentencing transcript reflects that the district judge heard argument from the parties and a statement from the defendant prior to imposing the sentence.

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<sup>1</sup>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.

The defendant stated that he was fully responsible for his conduct and explained that he had a renewed religious faith. The district judge did not immediately comment after the defendant concluded his remarks; instead, the defendant's attorney asked to make an additional comment, which the district judge permitted. At no time did the district judge make any remarks about the defendant's religious faith. In imposing the defendant's sentence, the district judge characterized the defendant's offense as "one of the most serious offenses." The district judge recounted the defendant's criminal history. The district judge then considered the defendant's acceptance of responsibility, stating that the judge would vary downward to "recogniz[e] the fact that [the defendant] pled guilty." After imposing the sentence and clarifying the term of imprisonment with the government, the district judge considered the defendant's objection to the sentence "as being greater than necessary based on the defendant's history and characteristics and the need for treatment." The judge overruled the objection, stating that the defendant is "an extremely dangerous person" who has "caused irreparable harm to other people."

The sentencing transcript does not substantiate the judicial complaint's allegation that the district judge acted in a demonstrably egregious and hostile manner. Thus, this allegation "lack[s] sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(D). To the extent the judicial complaint challenges the district judge's reasons for imposing the defendant's sentence, such allegations are directly related to the merits of the judge's decisions or procedural rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B).

The complaint is dismissed.

December 18, 2018

A handwritten signature in black ink, appearing to read "Lavenski R. Smith", written over a horizontal line.

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