

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90030

In re Complaint of John Doe¹

On August 2, 2019, a judicial complaint was filed against a United States district judge. The complainant alleges that the district judge has “refused . . . to [d]ocket” a letter from the complainant to the district judge dated June 7, 2019, concerning alleged misconduct of an Assistant United States Attorney involved with the complainant’s criminal case.

I have obtained a response from the district judge. In that response, the district judge states that the complainant’s judicial complaint “incorrectly characterizes the record and the disposition of the letter.” The district judge represents that the letter was received on June 18, 2019. That letter constituted “a pro se communication” because “Complainant is represented by counsel.” As a result, the district judge “discussed the matter on the record at a status hearing attended in person by representatives from the Office of the United States Attorney . . . , Complainant’s attorney, and Complainant.”

Appended to the district judge’s response is a transcript of that status hearing. At that hearing, the complainant’s counsel represented to the district judge that counsel had discussed the letter with the complainant. The complainant’s counsel informed the district judge that the letter’s sole purpose was to inform the district judge that the complainant had filed a complaint against the Assistant United States

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 complaint about are to remain confidential, except in special circumstances not present here.

Attorney with the Department of Justice and that the Department of Justice had received the complaint. The complainant's counsel confirmed that the letter was not a motion or a request for the district judge to take any action. The district judge then asked the complainant if counsel's statements were correct, and complainant nodded in the affirmative.

In preparation for trial, "to ensure the case record on Complainant's letter was clear and that Complainant's position had not changed," the district judge scheduled a status hearing on the letter. The letter appears on the docket as an attachment to the district judge's order scheduling the status hearing. A transcript of the status hearing also appears on the docket. At that status hearing, the district judge explained that the letter had not previously been docketed because the complainant is represented by counsel. The district judge also recounted the prior conversation that the district judge had with the parties in which the complainant's counsel asked that the district judge take no action on the letter. The complainant's counsel then confirmed to the district judge that the complainant wanted "nothing done with the letter" and that "there is nothing to be litigated about it."

The district judge has docketed the letter, and the transcript confirms that the complainant, who is represented by counsel, wanted no action taken on it. No cognizable misconduct has occurred. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4(a) ("Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts."). In addition, the complainant's allegations against the district judge must be dismissed to the extent 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).

Accordingly, the complaint is dismissed.

November 25th, 2019



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