

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-20-90054

In re Complaint of John Doe¹

A judicial complaint was filed against a United States district judge. The judicial complaint alleges that the district judge “was biased in favor of [the district judge’s] former client and former law partner [who represented the former client]” in granting summary judgment in favor of that former client. The judicial complaint also raises an “ethical problem[] in judicial plagiarism” based on the substantial similarities between the district judge’s memorandum opinion and the former law partner’s legal brief. The judicial complaint alleges that the district judge “may have had ex parte communications with [the former law partner] or his office in order to obtain [the former law partner’s] brief for copying and pasting purposes.”

I requested a response from the district judge. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). In response, the district judge explained that when the district judge practiced law, the district judge “worked closely and in collaboration with more than 60+ attorneys, one of whom was defense counsel.” The district judge advised that the district judge “never socialized with [defense counsel] but [defense counsel] was a work colleague.” Specifically, the district judge represented that the district judge “do[es] not consider [defense counsel] to be a close personal friend and ha[s] never socialized with [defense counsel]. [They] are not part of the same social circles

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.

and neither . . . have been involved in any of the same social clubs or organizations. [The district judge] do[es not] recall even talking to [defense counsel] in the last 15–20 years.”

The district judge also “state[d] with absolute certainty that neither [the district judge] nor any of [the district judge’s] law clerks have ever had any *ex parte* communications, directly or indirectly, with [defense counsel] or [defense counsel’s] staff since becoming a federal judge.” Nor has the district judge or the district judge’s law clerks “ever requested that [defense counsel] or [defense counsel’s] office provide PDF files, or any other pleadings or documents, to be used in the preparation of any orders involving [the complainant]—or any other parties in any litigation in federal or state courts.” The district judge characterizes the allegation of *ex parte* communications as “blatantly false.”

As to the defendant in the complainant’s case, the district judge explained that a former partner “had the [defendant] as a client. Many attorneys in the firm, including [the district judge], assisted in the defense of [certain] claims brought against [the defendant’s employees] over the years.” But the district judge explained that the district judge has had no “involve[ment] in any such claims on behalf of the [defendant] for nearly 30 years.”

“Finally, as to the contention of judicial plagiarism,” the district judge explained that “there was *never any ex parte contact* with defense counsel to draft the summary judgment order. Further, the court’s order represented [the district judge’s] own determination on the merits.” The district judge noted that the Eighth Circuit affirmed the district judge’s summary-judgment order.

Pursuant to my limited inquiry, I then directed the complainant to

provide me with any evidence you have that (1) [the defendant] was previously [the district judge’s] client, as opposed to the client of a

former law partner; (2) [the district judge] and [the former law partner] have a personal, ongoing relationship, as opposed to being former work colleagues; (3) [the district judge] or his staff engaged in ex parte communications, directly or indirectly, with [the former law partner] or his staff.

I advised the complainant that “[f]ailure to provide the requested information within 30 days from the date of this letter could lead to the dismissal of your complaint.”

The complainant failed to provide the requested information. Because of this failure of proof and based on the district judge’s categorical denial of those allegations, there is no “reasonably disputed issue.” *See* J.C.U.S. Rule 11(b). No evidence exists that the district judge engaged in the conduct set forth in the judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(iii) (“After expeditiously reviewing a complaint . . . , the chief judge . . . may . . . dismiss the complaint . . . if the chief judge finds the complain to be . . . lacking sufficient evidence to raise an inference that misconduct has occurred”); *accord* J.C.U.S. 11(c)(1)(D). The judicial complaint is devoid of any evidence to substantiate the complainant’s claims against the district judge of bias, conflict of interest, ex parte communications, or any other improper conduct. Therefore, the allegations must be dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. 11(c)(1)(C), (D). To the extent the complaint challenges the district judge’s orders, the allegations must be dismissed because they are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

July 19, 2022



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