

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

September 26, 2012

FRANK H. EASTERBROOK
Chief Judge

No. 07-12-90065

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant is the mother of the plaintiff in a civil suit recently concluded after a jury trial. Complainant alleges that the district judge was rude and condescending to the plaintiff during the trial, and that the judge mocked the plaintiff “in a boisterous voice” and later “yelled at” the plaintiff.

I conducted a limited inquiry under 28 U.S.C. §352(a) and Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The district judge furnished relevant portions of the transcript and an audio recording of the proceedings. I also received narrative statements from the clerk of court, a courtroom deputy, the jury administrator, a courtroom security officer, and one of the judge’s law clerks. These materials lead me to dismiss the complaint under §352(b)(1)(A)(iii) because the allegations are conclusively refuted by objective evidence.

The audio recording shows that the judge did not yell at anyone, was not boisterous, and did not use a sarcastic tone. She did frequently direct the plaintiff to do particular things. He was not assisted by counsel and did not know how to perform some of the steps essential to trial, such as marking and exchanging proposed exhibits. The district judge helped him to do so; this necessarily entailed pointing out what he had been doing wrong. Complainant understood these necessary parts of trial management, which were undertaken using entirely appropriate language and tone of voice, as reflecting poorly on her son. A judge does not commit misconduct, however, by giving instructions, even when they are unwelcome to a litigant’s friends and relatives.

Complainant faults the judge for not ensuring that the jury was “racially balanced.” All jurors were white. Federal law does not require that a jury contain members of any particular minority group; what it *does* require is that neither the judge nor any other participant engage in racial discrimination. Apparently all members of the venire called for questioning were white. Neither complainant nor the plaintiff contends that the venire was improperly constituted. Often the luck of the draw will produce a jury that lacks minority members (especially in civil cases, which use smaller jury panels). Plaintiff himself told the judge that he was satisfied with both the jury-selection process and the composition of the jury. A judge does not commit misconduct by seating a jury selected without racial discrimination from a properly drawn venire.

According to complainant, the judge “asked my son, in mockery, if I had helped him prepare his papers for the court.” I have read that section of the transcript and listened to the recording; the judge was not mocking either the plaintiff or complainant. Plaintiff’s papers were disorganized, and the judge had to delay the trial several times while court officials helped plaintiff get documents in order. The judge asked plaintiff whether anyone, including his mother, had helped him organize the documents; plaintiff said no. Both the inquiry and the tone of voice were appropriate.

Complainant calls the judge’s conduct “rude and malicious” because, after the jury had returned its verdict, “the judge yelled at my son and told him that she didn’t give him ‘permission’ to put trash in her trash can.” The recording shows that the judge did not yell at the plaintiff, and the instruction not to use a particular waste basket was entirely appropriate. While the judge was on the bench, plaintiff stepped around the court reporter’s desk and tried to deposit trash in a waste basket behind the bench. The judge told plaintiff that he could not use that waste basket. This was a matter of court security as well as courtroom decorum; litigants are not allowed to step behind the bench but must remain in the public sections of the courtroom.

Finally, complainant believes that the judge employed a double standard by instructing litigants and spectators not to converse with courtroom personnel while not giving the same instruction to the court’s employees. Complainant took offense when, before trial began one day, the jury administrator (to whom complainant had protested about the lack of racial balance on the jury) passed her on the way into the courtroom and said “good morning.” The jury administrator behaved appropriately; there is no rule against polite greetings. And there is no need for a judge to tell the court’s own staff, in open court, about appropriate conduct. Litigants, witnesses, jurors, and spectators may not know that questions should be directed to the judge rather than to law clerks, jury administrators, and courtroom deputies; it is unnecessary to give the same advice to the professional staff during every trial, since they know the rules.