

Judicial Council of the 8th Circuit
Clerk, United States Court of Appeals
111 S. 10th Street
Room 24.329
St. Louis, Mo 63102

Re: Judicial Disability Complaint regarding Judge Richard H. Battey, District of South Dakota,
Western Division

Statement of Facts

This complaint is filed regarding the mental competency of Federal Judge Richard H. Battey of the District of South Dakota, Western Division. Because of his behavior in the courtroom, which I witnessed, Judge Battey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, and is unable to discharge all the duties of office by reason of mental disability.

Judge Richard H. Battey exhibited behavior that was prejudicial and improper during the Marc Sean Wisecarver trial on three occasions: on Jan. 27-29, 2009, and again on May 4, and May 18-19, 2010. The judge's behavior is clearly questionable regarding his mental competency. As he is eighty-four years old, it is possible his age has led to physical degeneration of his mental capabilities. Furthermore, his behavior is making a mockery of the federal judicial system, and causing a lack of faith in the fairness of the federal court system.

The following are examples of his behavior which I observed and have led to my complaint of his mental competency to continue sitting on the bench as a federal judge.

1. Disregard of Appellate Court Decision: In their decision regarding the Marc Sean Wisecarver Appeal, on March 22, 2010, the 8th Circuit Court of Appeals declared:

“Accordingly, the judgment of the district court is reversed. The case is remanded to the district court with directions to vacate its judgment of conviction on the depredeation count and its sentence.”

However, Judge Battey had Wisecarver held and a new trial convened on May 18-19, 2010, stating in his Order of Detention:

“On March 22, 2010, upon appeal, the Eighth Circuit Court of Appeals remanded the case for a new trial.”

The Court of Appeals clearly did not order a retrial so why did Judge Battey continue to hold Marc Wisecarver in detention and convene another trial? Marc Wisecarver is a Native American who resides on the Pine Ridge Indian Reservation but has no prior record at age 39, and does not use alcohol or illegal drugs.

2. Lacking Judicial Discretion regarding Jurisdiction: The charge of depredeation/destruction of government property is not under the purview of a federal court when the offense is committed on a Federal Indian Reservation and is clearly under the jurisdiction of the Tribal Court system. Although Judge Battey was clearly aware that the alleged offense was already prosecuted in the Tribal Judicial system in October, 2008, and dismissed with prejudice, Judge Battey continued the case in a federal court thereby overstepping the boundaries of the federal judicial system. Why?

3. Treating litigant in a demonstrably egregious and hostile manner: During the sentencing of Marc Wisecarver, Judge Battey stated he was going to use Wisecarver “as an example” to stop the violence

on an American Indian Reservation where Wisecarver resides, when Wisecarver, age 39, has no prior record, and does not drink or use drugs. Furthermore, the Judge gave an upward departure on the sentence with no evidence for his departure, and sentenced Wisecarver to three years in a federal prison with three years probation. Is Judge Battey confusing Marc Wisecarver with another person? Why does he continue treating Marc Wisecarver in such a hostile manner when Marc Wisecarver never met Judge Battey before the court proceedings began?

4. Excessive Incarceration before Sentencing: Judge Battey had Marc S. Wisecarver held from Jan. 29, 2009, until April 18, 2009, nearly three months after the first trial, before he conducted the sentencing on a misdemeanor. When the Defense Attorney objected, Judge Battey stated that Wisecarver was now a convicted felon and needed to be incarcerated.

After the 8th Circuit Court of Appeals overturned Judge Battey's decision on the first Wisecarver verdict and ordering the vacature of the conviction, Judge Battey again had Wisecarver charged with the same crime, clearly in violation of the Amendments to the Constitution of the United States regarding 'double jeopardy.' Again, after wrong jury instructions and another guilty verdict, Judge Battey set the sentencing date from May 19 to August 10, 2010, keeping Wisecarver incarcerated for another 3 months on a misdemeanor. By the time of the second Sentencing Hearing on August 10, 2010, Wisecarver will be incarcerated for 19 months, clearly excessive for a misdemeanor. This leads one to question the reasons for Battey's continual harassment of Marc Wisecarver when Wisecarver had no prior record.

5. Confusing Opening Remarks: During the second Wisecarver trial on May 18-19, 2010, in the Judge's opening remarks, he consistently contradicted himself which clearly confused the jury, and also members of the audience of which I was a member. During the final jury instructions, the judge again misstated the laws and regulations of the federal government which upon appeal will again be overturned at the Appellate level. However, Wisecarver will be incarcerated until that time which could take more than 15 months as Judge Battey refuses to release him. Why?. As of May 29, 2010, Wisecarver has already been incarcerated for 16 months.

6. Questionable Behavior on the Bench: Judge Battey was a county prosecutor prior to his appointment as a federal judge. Time after time, during the above mentioned court proceedings, he consistently overruled the Defense attorney's objections, and made objections himself as if he were trying the case as the prosecutor. It raises the question of whether the Judge still considers himself a prosecutor and has forgotten that he is a federal judge.

All of the decisions rendered by Judge Richard H. Battey, especially for the past five years, need to be investigated. His behavior in the courtroom clearly is in question, his erroneous directions to juries, his obvious disdain of the Appellate Court's decisions and findings, his delayed Sentencing Hearings with excessive incarceration, his egregious and hostile treatment of a litigant, and his overstepping the jurisdiction of the federal system bring questions as to his competency to continue as a federal judge.

This complaint is respectfully submitted to the Judicial Council of the 8th Circuit by:

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June 2, 2010