

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-14-90010

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

This is a judicial complaint filed on April 21, 2014, against the United States district court judge who presided over a criminal case where a criminal defendant was found guilty by a jury and sentenced by the district judge. The complainant states he was not a party to or a lawyer in the criminal case.<sup>2</sup> I also received a lawyer's letter in support of this complaint, identifying the same issue and raising similar arguments.

The complainant alleges the district judge "endorse[d]" a "grand jury indictment used to convict [the criminal defendant that had been] altered and amended by the United States Attorney's Office, the Court and its members." The complainant states "[t]he redacted and amended . . . indictment that was given to [the] jury was never filed with the Federal Court." The complainant explains, "The core summary of this complaint against the [district judge] is that the illicit amendment of a grand jury indictment did indeed take place, according to the repeated declarations of [the] United States Attorney . . . , and that the Court approval of this disregard of

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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 (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

<sup>2</sup>"*Any person* alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts . . . may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct." 28 U.S.C. § 351(a) (emphasis added).

Department of Justice protocol is unconstitutional, and potentially a criminal act, for all parties who knowingly and willfully amend a grand jury indictment.”

In addition, the complainant alleges the district judge “circumvented” a jury question “pertaining to the substance of the indictment.” The complainant suggests the district judge’s answer to the jury question could have “violat[ed the criminal defendant’s] Fifth Amendment rights.” The complainant also claims the district judge’s comments to counsel “suggest[] a potential undue influence on the jury, as to possibly gain a particular conclusion or outcome.”

The lawyer’s letter explains “[t]here was a joint indictment,” the two other parties were “never arraigned,” “[n]o severance was properly done,” the district judge admitted “changing the indictment,” and the criminal defendant should be released immediately.

First, the judicial complaint procedure is limited to United States judges and does not apply to other officials who work for or appear in the federal courts. See 28 U.S.C. § 351(a), (d)(1); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4; E.C. Rule 1(c). Thus, the complainant’s allegations of misconduct by the United States Attorney or other non-judicial persons are not considered here.

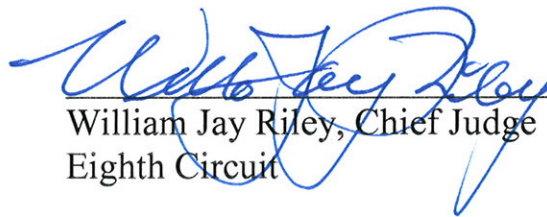
Second, after careful review of the complaint, I find the complainant’s allegations against the district judge must be dismissed because they directly relate to the merits of the judge’s decisions and are therefore not proper subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B). “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, . . . the complaint is not cognizable to the extent that it attacks the

merits.” J.C.U.S. Rule 3(h)(3)(A). These matters potentially could be issues for a direct appeal by the criminal defendant.

Third, the complainant’s allegations of judicial misconduct “lack[] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see also J.C.U.S. Rule 11(c)(1)(D); E.C. Rule 4(c)(3).

The complaint is dismissed.

June 6, 2014



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William Jay Riley, Chief Judge  
Eighth Circuit