

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-14-90015

In re Complaint of John Doe¹

This is a judicial complaint filed on June 12, 2014, by a state inmate against the United States district court judge who presided over the complainant's pro se civil rights suit against a state prison warden and a doctor. The district judge granted the prison warden and doctor summary judgment. The complainant appealed the district judge's adverse summary judgment, and the appeal is now pending. The district judge also denied as moot the complainant's post-judgment and post-appeal notice motion for the district judge to recuse.

The complainant alleges the following regarding his civil rights suit: (1) the district judge "was partial to the [d]efendants"; (2) the district judge improperly placed the complainant's submitted evidence under seal; (3) the defendants "held up" the complainant's "filings," "which caused [them] to be late"; (4) the defendants improperly "held papers to be filed" until after the date of the district judge's order on their motion for summary judgment; (5) the district judge mischaracterized one of the complainant's submissions to the district court; and (6) the district judge did not fully "review[]" or "respond to[]" the issues raised by the complainant. In addition, the complainant requests a temporary restraining order related to the issues in his civil case. Finally, the complainant apparently disagrees with the district judge's denial of the motion to recuse.

¹Under 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.

First, the judicial complaint procedure is limited to United States judges and does not apply to other persons who 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 defendants or other non-judicial persons are not considered here.

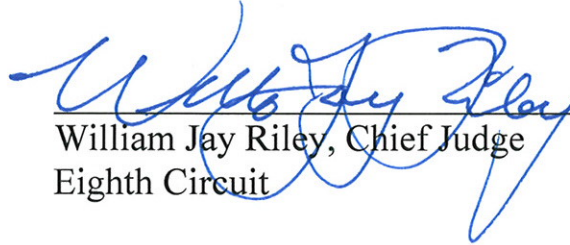
Second, after careful review of the complaint, I find the complainant's allegations against the district judge must be dismissed because they directly relate to the merits of the judge's decisions and are therefore not proper subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B). "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, . . . or improper conduct in rendering a decision or ruling, . . . the complaint is not cognizable to the extent that it attacks the merits." J.C.U.S. Rule 3(h)(3)(A). 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).

Of some significance, the complainant's motion to recuse was filed after complainant filed a notice of appeal, which ended jurisdiction in the district court for the complainant's civil rights suit. "Generally, '[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'" Chambers v. Pennycook, 641 F.3d 898, 903-04 (8th Cir. 2011) (alteration and omission in original) (emphasis omitted) (quoting Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (per curiam)).

Finally, I do not have authority through the judicial complaint process to issue a temporary restraining order or injunction. See 28 U.S.C. § 352; J.C.U.S. Rule 11.

The complaint is dismissed.

July 11, 2014



William Jay Riley, Chief Judge
Eighth Circuit