

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-14-90016

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

This is a judicial complaint dated June 13, 2014, together with a supplement dated July 7, 2014, by an inmate against two of the United States district court judges who presided over the complainant's 2001 criminal trial, sentencing, post-trial motions, and related civil cases. The district judge who presided over the complainant's jury trial, sentencing, and initial post-judgment motions has retired, and another district judge was assigned to the complainant's criminal case in May 2013.

Most of the complainant's alleged instances of judicial misconduct are directed to the now-retired district judge. The judicial complaint procedure is limited to United States judges only, i.e., judges in service. 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). Because the first district judge has retired, the complainant's allegations of misconduct against him will not be considered. Similarly, the complainant's allegations of misconduct against federal prosecutors, FBI agents, IRS agents, and other non-judicial persons are not considered here.

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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.

As to the second district judge, the complainant alleges the district court inappropriately “flagged” him as a criminal defendant, explaining he received a docket sheet for his criminal case that included the following notation dated July 18, 2013: “Set/Clear Flags as to [the complainant].” The complainant speculates, “This selective behavior has been a continuing pattern begun by [the retired district judge] and continues with [the current district judge]. This would indicate that as far as the court is concerned, [the complainant is] a marked man, specifically singled out from all others so that [complainant] will receive no relief or justice in any matter brought before the court.”

On the contrary, investigation of this docket entry revealed the “Set/Clear Flags” notation is a routine, internal marker for the district court clerk indicating that some ministerial action needs to be taken on the case, such as copying a document, making a docket notation, or closing the case following appeal. The flag has no substantive bearing on the judicial merits or on the complainant himself.

The complainant otherwise generally alleges, as to his criminal case, his “post-conviction pro se appeals before [the current district judge] were doomed to failure and routinely denied on procedural grounds.” The complainant also contends the current district judge “formed an unfavorable predisposition against [the complainant].”

In a related civil action, the complainant claims the current district judge “designated [the complainant] ‘indigent’ but dismissed the complaint as ‘frivolous.’” The complainant alleges that “[i]n order to force [the complainant] from any further appeals to prove [complainant’s] innocence, [the current district judge] ordered [the complainant] to pay court filing fees.” The complainant suggests “[t]he district court knows that [complainant is] innocent of the charges against [him] based on the clear and convincing evidence [complainant has] consistently presented,” and requests that the current district court judge be “remove[d]” “immediate[ly].”

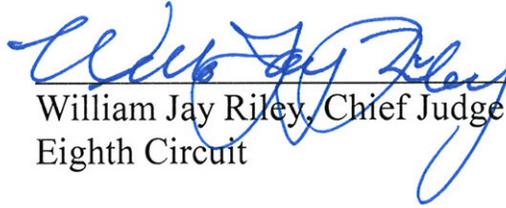
Finally, without naming any particular appellate judge, the complainant also alleges the Eighth Circuit Court of Appeals “has been [complicit], since it too has flagged all of [his] appeals by summarily affirming all of the decisions of the district court in clear violation of their own rulings.”

After careful review of the complaint, I find most of the complainant’s allegations against the current 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 . . . 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 remaining allegations of judicial misconduct are “frivolous [and] 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)(C), (D); E.C. Rule 4(c)(3).

The complainant also requests that “this Court” “vacate the convictions and dismiss the indictments of [the complainant and two co-defendants]”; “[r]eturn the home and property ruled forfeited by the district court”; and award the complainant “financial restitution” of over \$1 billion. These requests are outside the parameters of the judicial complaint process, and I do not have authority to take any such substantive action. See 28 U.S.C. § 352; J.C.U.S. Rule 11.

The complaint is dismissed.

August 26, 2014



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William Jay Riley, Chief Judge  
Eighth Circuit