JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-14-90023/08-14-90029

In re Complaint of John Doe[1]

These are judicial complaints filed on July 31, 2014, and September 22, 2014, by a plaintiff against the United States district court judge who presided over complainant's case (first judge), and the replacement district court judge following the first judge's recusal (second judge). In that case—a civil rights and state-law tort action centered around complainant's arrest and prosecution—the first judge entered a number of orders adverse to complainant. The complainant alleges that prior to a hearing before the first judge, a co-worker of defense counsel was present in the courtroom. According to complainant, this co-worker, also an attorney, was friends with the first judge and a relative to the first judge's law clerk. That day, the first judge entered an order of recusal pursuant to 28 U.S.C. § 455.

The second judge also entered a number of orders adverse to complainant, including the denial of complainant's motion to recuse. Ultimately, the second judge dismissed complainant's case for failing to comply with a prior order, as forewarned in that prior order.

Complainant alleges the first judge "conspired" with the law clerk, defense counsel, and defense counsel's co-worker "in making unjust ruling[s] . . . against [complainant] and in favor of the opposing parties prior to the order of recusal." Complainant claims the first judge signed such orders "predicated on improper

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[1]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.

motive of racial harassment, racial retaliation[,] racial bias, and . . . [complainant's] *Pro Se* status."

To the extent complainant's claims against the first judge are based on a perceived bias stemming from the presence of defense counsel's co-worker in the courtroom, there was no misconduct in the first judge's handling of the situation and complainant was not prejudiced. The adverse orders to which complainant alludes were entered *before* the hearing at which the co-worker was present, and the first judge recused on the same day of the hearing without entering any further orders. Complainant's allegation must therefore be dismissed as "alleg[ing] conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office." Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(A). Complainant's other allegations of improper motive against the first judge must be dismissed because they are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); see J.C.U.S. Rule 11(c)(1)(B); E.C. Rule 4(c)(2). These allegations are based only on the result of the judge's rulings and, as such, are merits-related. See J.C.U.S. Rule 3(h)(3)(A). In any case, all of complainant's allegations against the first judge are dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rule 11(c)(1)(D); E.C. Rule 4(c)(3).

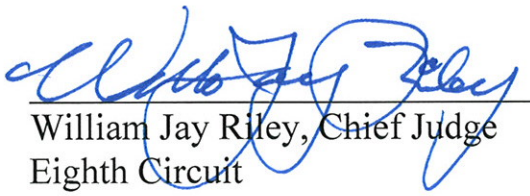
Complainant alleges the second judge "continued the conspiracy" against complainant by "unnecessarily highlight[ing] that [complainant is] *Pro Se*," repeatedly threatening to dismiss complainant's case, exhibiting at one point a "hostile and hateful" "demeanor toward" complainant, and entering numerous adverse orders against complainant, including dismissing the case altogether. Complainant also alleges the second judge "has a mental disability" and "demonstrates signs of dementia" such as "feeble-minded[ness]," "deterioration of judgment," and "loss of

mental capacity." Complainant draws this conclusion from a telephone conference with complainant and defense counsel during which the second judge "did not know what the current day or date was," referred several times to complainant as "defendant" or by using defense counsel's last name, and miscalculated the date on which a ten-day period would end—a Saturday. Finally, complainant accuses the second judge of having "fabricated" the date on which complainant was to comply with the judge's discovery order by stating one date during a phone conference and then entering a written order requiring earlier compliance.

After reviewing the evidence, including the transcript of the June 26, 2014, telephone conference, it is apparent the evidence does not support complainant's accusations of mental incapacity and feeble-mindedness. It is not mental disability to think out loud when determining a date or to misspeak by calling one person in a phone conference by the name of another in the conference (and then to immediately correct the misstatement). The transcript of that phone conversation also shows there is no factual basis on which complainant can assert the judge altered or "fabricated" the relevant date of compliance. The second judge confirmed the relevant dates with complainant, and memorialized the same dates in the written order. To the extent complainant's accusations of bias and improper motive by the second judge are supported by only the merits of the second judge's rulings, they must be dismissed as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); see J.C.U.S. Rule 11(c)(1)(B); E.C. Rule 4(c)(2). I therefore dismiss complainant's allegations against the second judge because the record lacks sufficient evidence to "raise an inference that misconduct has occurred or that a disability exists." J.C.U.S. Rule 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii); E.C. Rule 4(c)(3).

The complaint is dismissed.

October 15, 2014



William Jay Riley, Chief Judge
Eighth Circuit