

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP Nos. 08-14-90030 & 08-14-90037

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

This is a judicial complaint filed on October 2, 2014, by an inmate and pro se civil litigant against the United States district court judge presiding over complainant's civil rights case. Because a number of complainant's allegations also target the conduct of the magistrate judge in that case, I address complainant's single set of allegations as a complaint against both judges. The gist of this judicial "complaint is in regards to the judge and his clerks not reading the complaint, motions and responses . . . in the 42 U.S.C. [§] 1983 action . . . filed by the group of inmates" of which complainant is a member. Alleging numerous examples, complainant concludes "the judge or his clerks are not reading [the inmates'] filings to properly rule on the issues in [their] case." Complainant "ask[s] that the judge terminate his incompetent help and hire some clerks who are able to properly do the clerking jobs assigned them."

As support for this conclusion, complainant notes that despite having included a demand for a jury trial among the civil complaint's requests for relief, "the judge denie[d] a jury trial" as untimely, only later to correct this ruling after complainant identified the jury trial demand in the complaint. Complainant also points to the alleged fact that "the judge's ruling" on the inmates' motion for class certification did "not . . . comport with or answer" the four requirements of Federal Rule of Civil

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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.

Procedure 23 and failed to “address the issues [the inmates] raise[d] on why [their] suit [wa]s ripe for class certification.” Complainant also asserts the defense attorney “file[d] a late motion for an extension which was granted before [the inmates] could even resist it” and claims that although the inmates filed a post-ruling resistance, “no one” read it or “address[ed] the matter of th[e] late and untimely filing by” the defense. Complainant alleges “[t]his not reading [the inmates’] material is [also] shown by a motion filed by [one of the inmates] . . . address[ing] the proper head of the class and who is the representative and tells the cour [sic] that the heading or the list of Plaintiffs is out of order”; according to complainant, “this [filing] has [never been] addressed.” From this, complainant intimates the inmates’ “filings are . . . just scanned through and not given any credence” and that the judge “or his clerks are showing favorable treatment to the attorney for the defendants over that of the Pro Se [inmates].”

Complainant further claims the district judge relied on “unpublished” case law which was “not controlling” and does not support the propositions for which it was cited. Complainant again contends “the judge [and] his staff are not even reading the case law that goes with the issue being ruled on” and “it appears that the judge or his staff rely on what ever [sic] the defendants put in their replies and not what [the inmates] filed at all.”

Complainant lastly alleges the district judge exhibited favoritism and neglected the inmates’ arguments by “questioning the sincerity of [complainant’s religious] beliefs as head of the class” bringing Free Exercise claims and by denying as moot the inmates’ request for an evidentiary hearing on the issue.

Although these allegations refer simply to “the judge,” a number of the described allegations were actions by the magistrate judge. Because complainant’s allegations against the two judges require dismissal for similar reasons, I address both sets of claims together.

Initially, I note the judicial complaint procedure is limited to United States judges and does not apply to a judge's staff. 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). I do not, and cannot, consider complainant's allegations to the extent they assert misconduct by the judges' clerks.

I also must dismiss most of complainant's claims that either judge was biased, exhibited favoritism, or failed to address the inmates' arguments, because these claims relate directly to the merits of the judges' decisions and therefore are 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); E.C. Rule 4(c)(2). "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A). Although allegations of judicial bias, malice, prejudice, deceit, collusion, or other improper motive or conduct are not necessarily merits-related, such allegations must be dismissed as such when, as here, the only support for the allegations is the merits of the judges' rulings themselves. See id.

Finally, complainant's allegations "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).

December 11, 2014

  
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William Jay Riley, Chief Judge  
Eighth Circuit