

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90002

In re Complaint of John Doe¹

This is a judicial complaint filed on February 9, 2015, by a state prisoner against the United States district judge presiding over complainant's pro se habeas corpus case. Complainant, denying he filed a request or affidavit to proceed in forma pauperis, states that instead of paying a \$5.00 fee with his petition for habeas corpus, he sent a letter to the clerk of court requesting assistance with the filing fee, indicating he would pay the filing fee once he had a case number. In a court document, it appears the clerk of court marked that complainant requested to proceed in forma pauperis, but noted that "he intend[s] to pay \$5 fee once he has [a] case" number.

The district judge ordered complainant to either pay "the \$5.00 filing fee" or "submit a request to proceed in forma pauperis and an affidavit of poverty in support thereof." At the request of the court's pro se law clerk, the Assistant Offender Finance Officer at complainant's corrections facility submitted an affidavit and an account statement showing complainant had a zero balance on his inmate account. The district judge issued a show cause order which (1) "grant[ed] petitioner leave to proceed *in forma pauperis*"; (2) concluded complainant's two asserted grounds for relief, liberally construed, did not appear frivolous or malicious; and (3) ordered one respondent to answer complainant's allegations and show cause why relief should not

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.

be granted but omitted the name of the other respondent from the case caption without including the Latin abbreviation “et al.,” which means “and others.” Complainant moved to vacate the order, raising three bases for vacatur, asserting his intent to pay the \$5.00 filing fee, and objecting that the district judge “granted permission for the [relevant] Department of Corrections to withdraw money from [his] prison account.” The district judge denied the motion to vacate, with all respondents included on this order (adding “et al.”), explaining that “nothing in this Court’s [prior] Order requires the collection of the \$5.00 filing fee in this case to be taken from [complainant’s] inmate account,” and informing complainant that if complainant prefers paying the \$5.00 filing fee to his in forma pauperis status, “he may do so at any time.”

In this judicial complaint, complainant reiterates the arguments he made in the district court for vacatur and now asserts judicial misconduct. First, complainant believes “a federal document had been fraudulently forged and filed in the habeas corpus proceeding to make it appear as though [complainant] presented it to the court seeking specific relief,” leading the district judge improperly to “subject[his] habeas corpus proceeding to a standard of in forma pauperis review.” Second, complainant alleges “someone” “removed” one named respondent “from [his] habeas corpus proceeding.” Finally, complainant avers his “habeas corpus petition’s Ground One issues [for relief] had been changed and altered by someone in the [district court]” and that this person “altered [the issues] to something foreign and unrelated to the Ground One issues . . . presented in [complainant’s] habeas corpus petition,” leading the district judge to “mishandl[e] the issues in dispute.”

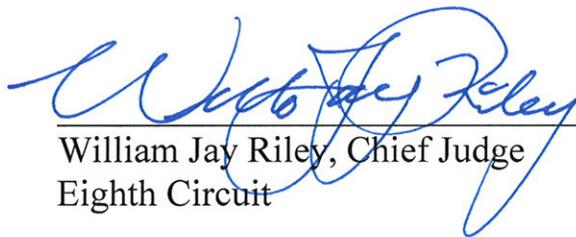
I first note that in forma pauperis status does not affect the level of review or scrutiny complainant’s claims will receive. Complainant’s ability to succeed on the merits of his petition is not affected by in forma pauperis status. In forma pauperis status relieves impoverished litigants of the cost of a filing fee in order to ensure they have access to the courts.

Insofar as complainant alleges persons other than judges have committed misconduct, such allegations are dismissed as being beyond the scope of the Judicial Conduct Rules. 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 must dismiss complainant's claims of judicial misconduct as "directly related to the merits of" his case. 28 U.S.C. § 352(b)(1)(A)(ii); see also 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. 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 are also "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 complaint is dismissed.

March 20, 2015



William Jay Riley, Chief Judge
Eighth Circuit