

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90004

FILED

MAY 14 2015

**MICHAEL GANS
CLERK OF COURT**

In re Complaint of John Doe¹

This is a judicial complaint filed on February 20, 2015, by a federal inmate against the United States district judge who presided over complainant's criminal case and issued a judgment adverse to complainant. In November 2014, complainant filed a motion to modify the trial record and submitted an affidavit describing two incidents of alleged witness tainting to support that motion. The district judge denied the motion.

In his present judicial complaint, complainant, enclosing relevant parts of the district judge's order, alleges it was "wrong for the [district judge] to LIE" about having "NO recollection of . . . [two] incidents of witness tainting" not captured or otherwise reflected in the trial transcript, "when its not that hard to call [complainant's attorneys] and see, for himself," that witnesses were tainted. Complainant alleges "[t]his may be a competence issue with [the district judge]" because the judge "states he dont [sic] remember either incident." Complainant proposes the district judge "messed up and he knows [complainant's] Due Process of a Fair Trial was violated by one or even both incidents." Complainant further asserts

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.

the district judge “is delaying [complainant’s] appeals by causing all the delays in the truth” and “caused prejudice” to complainant.

Based on a thorough review of the record, including the trial transcript, complainant’s claims must be dismissed as “frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists.” Judicial Conference of the United States Rules for Judicial-Conduct and Judicial-Disability Proceedings (J.C.U.S.) Rule 11(c)(1)(C), (D); see also 28 U.S.C. § 352(b)(1)(A)(iii); E.C. Rule 4(c)(3). The majority of complainant’s contentions also directly relate to the merits of complainant’s case and must be dismissed because they are improper 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. If the decision or ruling is alleged to be the result of . . . 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).

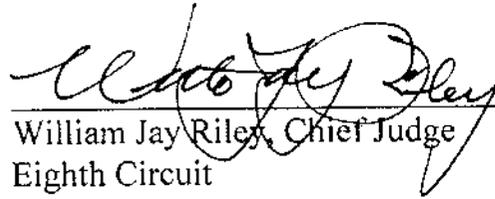
Complainant’s vague assertions of delay must also be dismissed. “[A]n allegation about delay in rendering a decision or ruling” is not cognizable misconduct “unless the allegation concerns an improper motive in delaying a particular . . . decision . . . or habitual delay in a significant number of unrelated cases.” Id. Rule 3(h)(3)(B). Complainant makes no such allegation here.

This is complainant’s fifth judicial complaint related to his criminal case and his second judicial complaint against the same district judge. All of his previous judicial complaints were dismissed. Complainant has been advised a judicial complaint is not the proper venue to challenge the merits of a judge’s substantive decisions. Because complainant continues to file repetitive, frivolous, and merits-related judicial complaints regarding the same case, complainant is warned for the last time that abuse of the judicial complaint process will result in the imposition of

conditions limiting continued access to the process. See E.C. Rule 1(f); JCP No. 08-14-9008 at 2-3.

The complaint is dismissed.

May 4, 2015



William Jay Riley, Chief Judge
Eighth Circuit