

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90011

In re Complaint of John Doe¹

This is a judicial complaint filed on May 12, 2015, by a federal inmate against a United States appellate judge who twice sat on judicial panels (one in 2007 and one in 2009) reviewing complainant's appeals, and in the latter appeal, the judge authored a decision unfavorable to complainant. Complainant contends the judge had "inherent personal bias and prejudice against complainant[']s case" and "harbored preconceived notions concerning complainant[']s guilt." In support of this contention, complainant points to the judge's personal history and involvement in a nonprofit organization whose cause complainant asserts is related to the issues in complainant's own case.

Complainant believes the judge's alleged bias caused the appellate court's unfavorable ruling. In addition to the unfavorable ruling, complainant also alleges the judge "has impeded the addressing of [complainant's] habeas evidence," which evidence complainant contends would be sufficient to reverse his conviction. Complainant suggests the judge should have recused because of this alleged bias, and requests "review [of one of his criminal appeals] by a panel whose views are untainted."

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 majority of complainant's claims 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 also Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); E.C. Rule 4(c)(2). The judicial complaint recounts the facts of complainant's case and highlights the legal errors complainant believes were made by the appellate panel on which the judge sat. A judicial complaint is not a proper forum to relitigate the merits of complainant's criminal case.

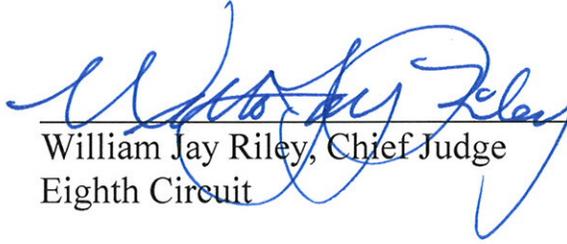
The issue of recusal also cannot be litigated here. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A). The judicial complaint procedure "may not be used to have a judge disqualified from sitting on a particular case; a motion for disqualification should be made in the case." E.C. Rule 1(e).

Although a claim of judicial bias or prejudice is not necessarily merits-related, such allegations must be dismissed as merits-related when, as in this case, the only support for the allegations is the merits of the judge's rulings. See J.C.U.S. Rule 3(h)(3)(A). Complainant attempts to support the allegations of bias by referencing the judge's personal background and extrajudicial activities. But "judges are entitled to some leeway in extra-official activities," id. commentary to Rule 3, and the complained of activities are not likely to have "a substantial and widespread lowering of public confidence in the courts among reasonable people," id. Rule 3(h)(2).

Finally, complainant's unsupported conjecture of prejudice and partiality and the allegation the judge somehow has delayed a determination of complainant's habeas corpus petition are dismissed because they are "frivolous [and] lacking 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.

June 22, 2015



William Jay Riley, Chief Judge
Eighth Circuit