

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-15-90015/08-15-90016

In re Complaint of John Doe¹

This is a judicial complaint filed on June 26, 2015, by a federal prisoner against the United States district judge who presided over complainant's 28 U.S.C. § 2255 petition (post-conviction judge) and the chief district judge of the United States district court in which complainant's case proceeded. Complainant previously filed a judicial complaint against the district judge who presided over complainant's criminal case (trial judge) and the magistrate judge who presided over portions of complainant's criminal case and subsequent § 2255 petition. Complainant alleged those judges engaged in multiple acts of judicial misconduct. I dismissed the first complaint because "[m]any of complainant's allegations" were "directly related to the merits of" the judges' decisions, (quoting 28 U.S.C. § 352(b)(1)(A)(ii)), and the remaining allegations were "frivolous [and] lacking sufficient evidence to raise an inference that misconduct ha[d] occurred," (quoting *id.* § 352(b)(1)(A)(iii) (alteration in original)). 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), (C), (D); E.C. Rule 4(c)(2), (3).²

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.

²As a threshold matter, complainant "request[s] that [I] be disqualified from being assigned to the instant judicial complaint" because I have "shown . . . bias[]" in favor of the judges and against complainant. First, this charge is false. Second, this request is denied because the judicial complaint procedure does not allow

After filing his first judicial complaint, complainant sent copies of the complaint to the chief district judge and the post-conviction judge, “ma[king] them aware” of the magistrate judge’s alleged misconduct. Complainant now argues these judges committed judicial misconduct “[b]y doing nothing to correct” the misconduct alleged in the initial judicial complaint. Complainant focuses on the earlier judicial complaint charge that the magistrate judge:

intentionally and maliciously **“lied”** in her Report and Recommendation (R & R) on [complainant’s] § 2255 . . . by falsely alleging [complainant] did not have the court’s permission to file [complainant’s] final response to the Government’s Answer to [complainant’s] § 2255.

Complainant characterizes this alleged false statement as “evil” and declares “by doing nothing to correct [the magistrate judge’s] deliberate intent to deceive the Court . . . [the post-conviction judge and the chief district judge] are just as guilty as [the magistrate judge].” Assuming the false statement was made as alleged, such a statement is not “evil,” and no evidence indicates malice. Because the initial judicial complaint contained no allegations of cognizable misconduct, it follows that the chief district judge and the post-conviction judge committed no misconduct in failing to act on the complaint.

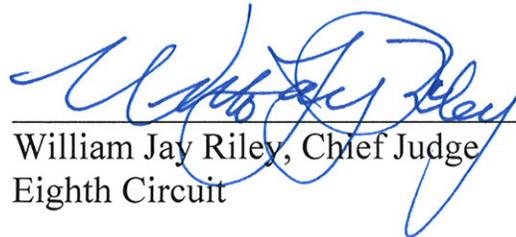
Complainant further alleges the post-conviction judge “endors[ed] and approv[ed] the magistrate judge’s misconduct” by adopting the magistrate judge’s report and recommendation. This allegation “question[s] the correctness of [the post-conviction] judge’s ruling[s],” J.C.U.S. Rule 3(h)(3)(A), and thus is dismissed

complainants to select the judge who will review their complaints. See 28 U.S.C. § 351(c) (“Upon receipt of a [judicial] complaint, the clerk [of the court of appeals for the circuit] shall promptly transmit the complaint to the chief judge of the circuit.”); E.C. Preface to the Rules (“Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint should be investigated.”).

because it is “directly related to the merits of a decision or procedural ruling.”
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).

The complaint is dismissed.

July 17, 2015



William Jay Riley, Chief Judge
Eighth Circuit