

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90022

In re Complaint of John Doe¹

Complainant is a pro se civil litigant who has filed multiple federal lawsuits challenging his 1991 state-court conviction for voluntary manslaughter. On July 27, 2015, complainant filed this complaint against the United States magistrate judge assigned to several of complainant's cases. This is the second complaint complainant has filed within two months regarding the same issue.

In his first complaint (JCP No. 08-15-90017), complainant alleged the United States district judge who dismissed complainant's 42 U.S.C. § 1983 civil rights case improperly refused his request for a new trial. I dismissed the complaint, explaining 28 U.S.C. § 352(b)(1)(A)(ii) required dismissal because complainant's allegations were "directly related to the merits of" the district judge's rulings. 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).

Complainant also appealed the district judge's denial of his request for a new trial to the Eighth Circuit Court of Appeals, which affirmed the denial. Within six months of his failed appeal, complainant filed another 42 U.S.C. § 1983 civil rights suit in the district court, again seeking a new trial on the same grounds. That case remains pending at the time of this order.

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.

In his present judicial complaint, complainant asserts, “In 1996 two US district court employees came to [complainant’s] house posing [sic] as siding and window salesmen.” Complainant reports the employees asked him about his case and “told [him] that ‘[he had] a great case and . . . should sue,’” advising him he could “‘sue ‘em up the ying yang.’” Complainant believes the magistrate judge “sent those 2 men to [his] house,” and, upon receiving their report about his case, told the presiding district judge “to denigh [sic] [complainant] a new trial.”

Complainant complains the magistrate judge again recommended, “No trial. No Free attorney” in a second case complainant filed last year—the same case that was the subject of complainant’s first judicial complaint and unsuccessful appeal. With no evidence beyond the assertion that the magistrate judge “has denigned [sic] [complainant] a new trial twice now,” complainant alleges the magistrate judge is “corrupt.” Complainant hopes a different magistrate judge will be assigned to his latest appeal.

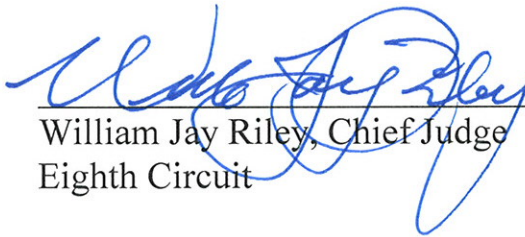
Complainant’s unsupported allegations of corruption and his unfounded speculation that the magistrate judge inexplicably sent court employees to complainant’s house posing as siding and window salesmen to learn about complainant’s case are patently “frivolous” and “lack[] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see also J.C.U.S. Rules 11(c)(1)(C), (D).

The complainant’s allegations also must be dismissed because they again are “directly related to the merits of” the magistrate judge’s rulings and are therefore 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). Without more, allegations that question the correctness of a judge’s rulings or recommendations are merits related. J.C.U.S. Rule 3(h)(3)(A).

I caution complainant that repetitive, frivolous, and merits-related judicial complaints regarding the same judges and the same issues could lead to limitations on complainant's ability to use the judicial-complaint procedure. See J.C.U.S. Rule 10(a); E.C. Rule 1(f). Whether by lawsuit or judicial complaint, complainant cannot continue to refile the same claim after dismissal hoping to achieve a different result.

The complaint is dismissed.

September 28, 2015



William Jay Riley, Chief Judge
Eighth Circuit