

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90025

In re Complaint of John Doe¹

This is a judicial complaint filed on August 14, 2015, by a federal prisoner against the United States district judge who denied complainant's motions to proceed in forma pauperis and dismissed complainant's pro se civil case without prejudice because complainant "has had three or more prior prisoner actions or appeals dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted." See 28 U.S.C. § 1915(g) (prohibiting in forma pauperis actions in such circumstances "unless the prisoner is under imminent danger of serious physical injury").

After the Eighth Circuit Court of Appeals dismissed complainant's appeal, the district judge directed the agency having custody of complainant "to forward to the clerk of the court monthly payments of 20 percent of the preceding month's income credited to [complainant's] account each time the amount in the account exceeds \$10 until the \$505.00 appellate filing fee is paid."

Attaching a copy of the district judge's order and a letter from the clerk's office forwarding the order to the Inmate Finance Office at the facility where complainant is in custody, complainant asserts the district judge's "action(s) and Judgement" are "a Complete form of misconduct where" the district judge denied complainant's

¹Under Rule 4(f)(1) of the Eighth Circuit Rules Governing Complaints of Judicial Misconduct and Disability (E.C.), the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not present here.

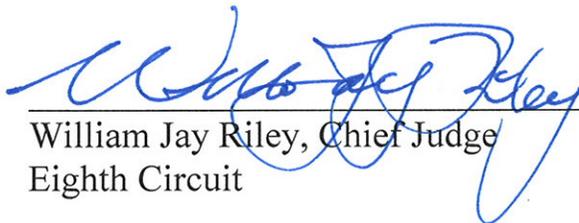
motion to proceed in forma pauperis but then ordered payment from complainant's trust fund under 28 U.S.C. § 1915(b). Complainant seems to suggest the district judge's order and judgment resulted from bias. With respect to relief, complainant asks "[t]hat Court order clerk to return funds received."

By its very nature, complainant's assertion that the district judge's order and judgment constitute judicial misconduct must be dismissed because it is "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B). "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A). Although an allegation of judicial bias is not necessarily merits related, such an allegation must be dismissed as merits related when, as in this case, the only support for the allegation is the merits of the judge's rulings. See J.C.U.S. Rule 3(h)(3)(A).

Though his intent is not entirely clear, the complainant also names the clerk of court in his complaint and alleges the clerk "received funds of a[n] Illegal nature." If complainant intended to allege misconduct by the clerk of court, those allegations must be dismissed because they are beyond the scope of the judicial-conduct review process, which only applies to federal judges. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

September 24, 2015



William Jay Riley, Chief Judge
Eighth Circuit