

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-15-90026/08-15-90027

In re Complaints of John Doe¹

These judicial misconduct complaints were filed August 17, 2015, by a state prisoner and pro se litigant against the United States district judge and United States magistrate judge presiding over complainant's 42 U.S.C. § 1983 civil-rights case. Citing to several of his motions in his case and an adverse district court order, complainant states the district judge and magistrate judge "engaged in conduct prejudicial to the effective and [sic] administration of justice business of the court, used it's [sic] office to obtain special treatment from and to [defense counsel and defendants in his case] in the absence of [complainant] and abused its discretion by failing to recruit [complainant] a lawyer." Complainant opines the judges "should have appointed counsel when [complainant] was transferred and retaliated against."

Complainant's unsupported allegations of prejudicial conduct must be dismissed because they lack "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); see Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 11(c)(1)(C), (D). Complainant's allegations must also 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 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."

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.

J.C.U.S. Rule 3(h)(3)(A). Allegations of preferential treatment or other improper conduct are not necessarily merits related, but such allegations must be dismissed as merits related when, as in this case, the only support for the allegations, if any, is the merits of the judge's rulings. See J.C.U.S. Rule 3(h)(3)(A).

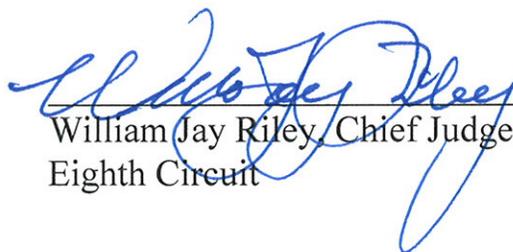
Complainant next complains the judges denied complainant the “right to appeal [the magistrate judge’s proposed findings and recommendations as to a disposition of complainant’s case] to the 8th Circuit Court of Appeals.” Complainant states he never received “the final judgment entered in the matter.”

Again, any challenge to merits of the judges’ decisions or procedural rulings must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B). And any residual complaint fails to show any judicial misconduct. As complainant points out, the magistrate judge made proposed findings and recommendations adverse to complainant. After considering complainant’s objections, the district court approved and adopted those findings and recommendations in their entirety. Based on those recommendations, the district judge dismissed complainant’s case on August 31, 2015—two weeks after complainant filed this complaint. Complainant was mistaken if he believes he had any right to appeal the magistrate judge’s order directly to the circuit court.

The rest of the present complaint pertains to alleged mistreatment and retaliation by the defendants in his underlying case. To the extent complainant intends to assert a complaint against anyone other than the district judge and the magistrate judge, the complaint is beyond the authority of the judicial conduct review process, which is limited to the conduct of federal judges. See 28 U.S.C. § 351(a), (d); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

September 30, 2015



William Jay Riley, Chief Judge
Eighth Circuit