

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90034

In re Complaint of John Doe¹

This is a judicial complaint filed on September 4, 2015, together with a first amendment filed on September 9, 2015, and a second and final amendment filed on September 21, 2015, by a federal prisoner against the United States district judge presiding over his criminal case. On July 27, 2015, complainant filed pro se a petition for a writ of mandamus with the Eighth Circuit Court of Appeals, raising many of the same issues raised in this complaint. The Eighth Circuit denied the petition.

The main thrust of this judicial complaint is that complainant has specifically and repeatedly made the district judge aware of the serious problems complainant was having with his counsel in his criminal case, and the district judge failed to investigate and resolve complainant's problems.² Asserting "[t]he action and

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.

²Specifically, complainant avers he put the district judge on "DIRECT NOTICE" his counsel (1) withheld and concealed evidence from complainant; (2) facilitated complainant's conviction when counsel realized he could not force complainant to plead guilty; (3) delayed investigating exculpatory claims; (4) retaliated against complainant for his reporting on counsel to counsel's supervisor and the Office of Lawyers Professional Responsibility; and (5) "aided the government in finding [complainant] guilty" and "is now seeking to aid the government to uphold [complainant's] conviction on appeal."

inactions of [his counsel] during [the criminal] proceeding clearly violates many of [complainant's] constitutional rights,” complainant alleges “[t]he FACT that [complainant] put the court on DIRECT notice of all these violation[s] as th[e]y w[ere] being committed and the court failed to take appropriate action to address and correct this injustice ma[de] the court a party to the const[it]itutional violation[s] before and after the fact” and “served to facilitate and foster the constitutional right[s] violations.”

Complainant maintains the district judge's failure to resolve this issue denied complainant “a proceeding that comported with due process and equal protection of law as guaranteed under the United States Const[it]ution.” According to complainant, the constitutional violations are well-documented and seriously affect the fairness, integrity and public reputation of judicial proceedings. In complainant's estimation, “[t]his conduct from a FEDERAL judge gives the Judic[i]al legal profession two black eye[s] a bursted lip and a bloody no[s]e. It makes all judges look bad.”

In his most-recent filing, complainant reports he is “BEING FORCED TO KEEP [HIS COUNSEL] DURING POSTCONVICTION PROCEEDING AGAINST [HIS] DESIRE AND AGAINST [HIS] WILL.” Complainant reports he attempted to fire his counsel, but “did not get a response from” his counsel or the district judge, and the district judge has not ruled on complainant's motions related to his request for new counsel.

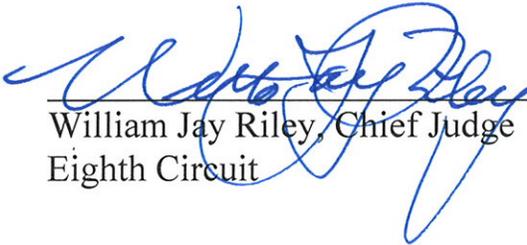
Having thoroughly reviewed this matter, I find complainant's allegations against the district judge must be dismissed because they directly relate to the merits of the judge's decisions and are therefore not proper subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); see Judicial-Conduct 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).

It is not entirely clear from complainant’s judicial complaint whether he is complaining directly about the conduct of his counsel. For the most part, complainant’s allegations are directed at the district judge—though derived from his counsel’s conduct. Complainant’s professional responsibility complaints against his counsel also demonstrate complainant is aware there are other avenues for challenging his counsel’s performance. Still, some of complainant’s allegations based on his counsel’s “acts and inaction” could be construed as direct complaints against his counsel. Any allegations directed at complainant’s counsel must be dismissed because the judicial complaint procedure is limited to United States judges, and it does not apply to other officials who appear in the federal courts. See 28 U.S.C. § 351(a), (d); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

October 2, 2015



William Jay Riley, Chief Judge
Eighth Circuit