

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-15-90037

In re Complaint of John Doe¹

This is a judicial complaint filed on September 22, 2015, by a federal prisoner against the United States district judge who presided over complainant's criminal conviction for being a felon in possession of a firearm and ammunition, and also complainant's petition for habeas relief. In the course of habeas proceedings, the district judge denied complainant's numerous motions, including for appointment of counsel and recusal. On November 21, 2013, complainant appealed his conviction to the Eighth Circuit Court of Appeals, which denied relief on July 17, 2014. On May 13, 2015, complainant also appealed the denial of his habeas petition. The Eighth Circuit again denied relief.

In this judicial complaint, complainant alleges the "miscarrage [sic] and Obstruction of Justice that have occurred [sic] During this ordeal severely [sic] Damage the integrity of the Justice system." Stating the district judge "has denied any wrongdoing an[d] says he is only following the Law," complainant maintains the district judge's one-time association many years before with the father of someone harmed by the firearm and ammunition complainant possessed "is enough to show Bias. [W]e all know how to read between the lines."

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.

It is not entirely clear, but complainant also appears to fault the district judge for knowingly allowing a government agent to threaten a witness with obstruction of justice to persuade the witness to testify falsely against complainant, unfairly surprising complainant at trial. Complainant, who reports he is proceeding “pro se by force,” next complains the district judge refused “to supply indigent [complainant] with transcripts, police interviews, and documents” and declined to appoint new counsel despite allowing complainant’s counsel “to withdraw after [complainant’s] initial appeal was denied.” According to complainant, his counsel had “a professional working relationship with [the district judge] and did not wish to upset [the district judge] by working [complainant’s] case with full diligence.”

Complainant further alleges (1) the district judge used his “Authority to change the indictment to match [the] evidence at trial”; (2) “motions were filed befor[e] trial without [complainant’s] knowlege [sic] den[y]ing [him] the right to Argue [his] case”; (3) “witnesses where [sic] brought in that had nothing to do with the case to testify”; and (4) “all motions filed By [complainant] where [sic] denied except extensions.” In closing, complainant states, “The Judge is in control of the courtroom an[d] what goes on an[d] he blat[a]ntly violated [complainant’s] constitutional Rights to a fair trial with Due process an[d] hes [sic] done it to many others.”

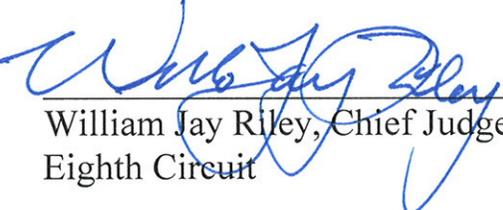
Complainant’s allegations do not set forth a cognizable claim of judicial misconduct. See 28 U.S.C. § 351(a); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h). First, the judicial complaint procedure is limited to United States judges and does not apply to other government agents or attorneys who appear in the federal courts. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c). As such, I have not considered complainant’s allegations of misconduct to the extent they apply to any one other than the district judge.

Second, most of complainant's allegations against the district judge must be dismissed because the allegations directly relate to the merits of the judge's decisions and procedural 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). "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A). Although allegations of personal bias or other improper motive or conduct are not necessarily merits-related, such allegations must be dismissed as merits-related when, as in this case, the only support for the allegation of bias is the merits of the judge's rulings. See id.

Third, the balance of complainant's allegations of judicial misconduct "lacks sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rule 11(c)(1)(D).

The complaint is dismissed.

October 15, 2015



William Jay Riley, Chief Judge
Eighth Circuit