

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-15-90039/08-15-90043

In re Complaints of John Doe¹

These are judicial complaints filed on October 6 and 9, 2015, against two district judges. The complainant, a pro-se civil litigant, was recently released from prison.

One of the district judges presided over the complainant's original conviction and sentencing and, most recently, the complainant's supervised-release proceedings. The complainant alleges that at a non-compliance hearing the district judge was "extremely hostile and acted very rude," "initially refus[ing] to let [the complainant] speak." The complainant also claims "[his] public defender informed [the complainant] that [the district judge] had made improper contact with [a probation officer] and had already made, beforehand, the decision to refuse to hear any of [the complainant's] arguments or claims, which [the complainant] now know[s] is improper." The complainant posits, "instead of listening to what [the complainant] had to say, [the district judge] refused to do so in an effort not to reprimand the persons he works with every day, the probation officers who are also officers of the Court."

The other district judge was assigned to a civil lawsuit the complainant filed based on allegations that probation officers violated his rights. The complainant

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 judges complained about are to remain confidential, except in special circumstances not present here.

takes issue with the district judge's failure to screen the case or otherwise allow it to proceed, despite quickly dismissing another case the complainant filed later. The complainant accuses the district judge of "using a dilatory tactic to stop [his] case from advancing against the probation officers, whom [the district judge] works with every day" and relies on to perform important functions for the court. The complainant also alleges

I was informed that [the district judge] had been having improper contact with [the probation officers the complainant sued] regarding the lawsuit i [sic] filed against them. And, comments made to me by [one of the probation officers] during a meeting in [the probation officer's] office confirmed that [the district judge] has assured these defendants they won't be held liable for any alleged conduct, and that my lawsuit would quote, "sit for years on [the district judge's] docket until [the complainant] is release [sic] from Supervised Release."

In addition to "favoritism towards the probation officers who work for him," the complainant attributes the district judge's refusal to screen his case to "personal bias towards [the complainant]." Complainant asks for the district judge to be recused from his case—which complainant would like reassigned to a judge in a different district—and "reprimanded."

I contacted both district judges, as well as the other individuals involved in the alleged improper contact. The district judge who presided over the non-compliance hearing responded "[t]here is no factual basis for [the complainant's] allegations." The complainant's public defender denied saying anything to the complainant about improper contact in the case, contrary to the complainant's allegation, and denied knowing of any improper contacts. The probation officer the district judge allegedly spoke to also denied having any contact with the judge.

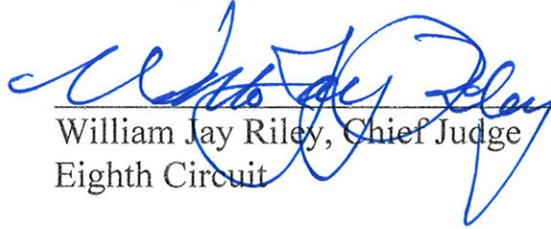
The district judge who presided over the complainant’s civil lawsuit likewise told me he “never met with or spoke to . . . anyone . . . in the probation office about the case” and never made the statement the complainant attributes to him “or any words to that effect.” And the probation officer who allegedly told the complainant about the improper contact stated the claimed conversation absolutely did not occur.

Accordingly, the allegations of improper contact must be dismissed as “frivolous” and “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C), (D). That leaves only the district judges’ decisions themselves to support the complainant’s allegations of bias or other improper motivations. In particular, the complainant’s general assertions and descriptions of the working relationship between federal courts and probation officers do not support an inference of favoritism or misconduct by these particular district judges in the complainant’s cases. So despite the complainant’s insistence that his complaints “ha[ve] nothing to do with the MERITS of [his] cases” and that he is “NOT complaining that [the district judge] should have . . . agreed with [him],” the complaints must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); see also J.C.U.S. Rules 3(h)(3)(A), (B), 11(c)(1)(B).

The complainant’s request for the recusal of the district judge assigned to his civil case appears to be moot, because the case has since been dismissed and the Court of Appeals affirmed the dismissal. In any event, recusal is not properly raised in an judicial complaint because it is also “directly related to the merits of a decision or procedural ruling”—namely, the district judge’s decision not to recuse himself. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B); E.C. Rule 1(e).

The complaints are dismissed.

March 30, 2016



William Jay Riley, Chief Judge
Eighth Circuit