

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-15-90055

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In re Complaint of John Doe<sup>1</sup>

This is the third judicial complaint arising out of the complainant's so-far unsuccessful collateral attacks on his 1991 state-court conviction for voluntary manslaughter. He first complained about a federal district court judge who construed an action the complainant filed as a civil-rights claim under 42 U.S.C. § 1983 and dismissed it. I dismissed his complaint, JCP No. 08-15-90017, primarily because it was directly related to the merits of the district judge's ruling. The complainant next accused a magistrate judge of being corrupt and sending court employees to gather information about the complainant's case by visiting his house disguised as siding and window salesmen. I dismissed that complaint, JCP No. 08-15-90022, as well, because it was directly related to the merits of the magistrate judge's supposed recommendations and the complainant's allegations were frivolous and lacked evidentiary support.

This complaint, filed on November 19, 2015, is about the (different) district court judge who dismissed the complainant's latest challenge to his 1991 state conviction. The complainant takes issue with the district judge's decision to treat his request for a new trial as an application for a writ of habeas corpus rather than, as the complainant calls it, a "fil[ing] for Conspiracy [sic] to obstruct Justice." The complainant alleges the district judge "willfully misfiled [the complainant's] case so

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<sup>1</sup>Under 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.

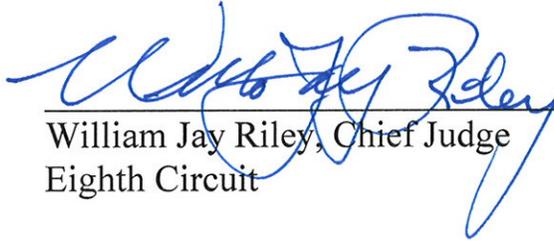
that he could easily dismiss it.” He made a similar accusation against the other district judge in his first complaint and now suggests the two judges are keeping him from getting a new trial so the truth about an unprosecuted crime from 1990 does not come out.

The complainant’s current allegations, like the others, cannot be raised in a judicial complaint because they are “directly related to the merits of [the district judge’s] decision” dismissing the complainant’s case. See 28 U.S.C. § 352(b)(1)(A)(ii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B). Although an allegation that a judge had an improper motive does not necessarily implicate the merits of the judge’s decision, here the only support for the complainant’s allegation that the district judge dismissed his case to perpetuate a cover-up is the ruling itself, so the allegation must be dismissed as merits-related. See J.C.U.S. Rule 3(h)(3)(A). The complainant’s bare assertions of corruption are also “frivolous” and “lacking sufficient evidence to raise an inference that misconduct has occurred” and subject to dismissal for those reasons as well. See 28 U.S.C. § 352(b)(1)(A)(iii); accord J.C.U.S. Rule 11(c)(1)(C), (D). And the complainant’s claim that the corruption extends to the city and county where he lives reaches well beyond the scope of the judicial-complaint procedure, which is limited to United States judges. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4.

Finally, I remind the complainant that the Judicial Council will not permit him to file repetitive or otherwise frivolous complaints. As I warned him in the order dismissing his second complaint, abuse of the judicial-complaint procedure “could lead to limitations on [his] ability to use the . . . procedure” in the future. See J.C.U.S. Rule 10(a); E.C. Rule 1(f).

The complaint is dismissed.

January 13, 2016



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William Jay Riley, Chief Judge  
Eighth Circuit