

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-16-90034

In re Complaint of John Doe¹

This is a judicial complaint filed on April 12, 2016, by a state incarcerated pro se civil litigant against a United States magistrate judge who issued a Report and Recommendation relating to the complainant's application for a writ of habeas corpus.

According to the complainant, the magistrate judge "had a conflict of interest in hearing" the complainant's Motion for Relief from Final Judgment and the magistrate judge should have recused.² The complainant reports the magistrate judge previously represented both the complainant and his brother "in this case that sparked the instant motion." The complainant also states the magistrate judge "represented the states [sic] chief witness and informant in this case . . . in 1987" and therefore should not have "rul[ed] on a case that hinged on an ex-client's credibility."

The complainant's allegations do not allege an actionable occurrence of judicial misconduct because the complainant's allegations are "directly related to the

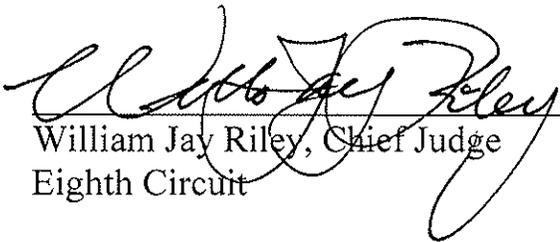
¹Under Rule 4(f)(1) of the Eighth Circuit Rules Governing Complaints of Judicial Misconduct and Disability (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

²The record in the subject habeas proceeding does not indicate the complainant requested that the magistrate judge recuse.

merits of a decision or procedural ruling.” 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). “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). The judicial complaint procedure “may not be used to have a judge disqualified from sitting on a particular case; a motion for disqualification should be made in the case.” E.C. Rule 1(e).

The complaint is dismissed.

May 16, 2016



William Jay Riley, Chief Judge
Eighth Circuit