

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-16-90035

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

This is a judicial complaint filed on April 25, 2016 by a federal inmate against the United States district judge who presided over the complainant's criminal trial.

The complainant asserts the district judge should have recused due to "a personal bias or prejudice" against the complainant. The complainant contends "there is [sic] substantial grounds to review all Rulings denying every motions [sic] during pre-trial proceedings." The complainant reports his attorney told him "there is [sic] no motions to Defend [the complainant's] case" so the complainant attempted to file several of his own motions, including a "motion to limine [sic] to subpoena [sic] government witnesss, [sic] motion to Suppress Evidence and Statements and more." The complainant also seeks review of several post-trial motions, asserting "there is [sic] substantial grounds for different opinion." The complainant proclaims that his "Due Process and Constitution Safeguard Rights were violated" by the district judge and the complainant's previous attorney.

The complainant also alleges the district judge "fell asleep During critical parts of Defendants [sic] trial." The complainant submitted four affidavits from witnesses who state they also observed the district judge sleeping during the trial. Upon my request for a response, the district judge replied that he does not recall falling asleep

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<sup>1</sup>Under 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.

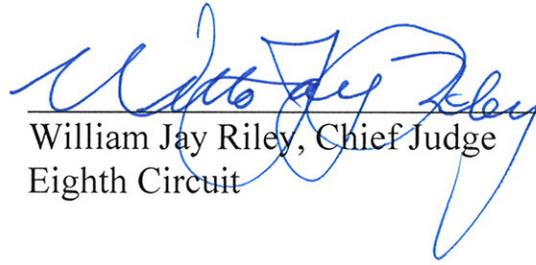
during the complainant's trial, but he "sometimes close[s] [his] eyes to remove visual distractions and to help [him] to concentrate on the lawyer's questions or the witness's answers." Closing one's eyes does not necessarily mean sleep or inattention. A thorough review of the trial transcript discloses no instance where the district judge did not respond appropriately or seemed unaware of what was happening. The complainant's assertion that the district judge fell asleep during the trial "lack[s] 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)(D).

The complainant's challenges to the district judge's rulings on motions are not cognizable in a judicial complaint because they are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); accord J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B). Although allegations of bias or prejudice are not necessarily merits-related, such allegations must be dismissed as merits-related where, as here, the only support for the allegations are the judge's rulings themselves. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B).

Finally, to the extent the complainant attempts to raise grievances with respect to his attorney, these grievances are beyond the scope of the judicial complaint procedure because the judicial complaint procedure is limited to United States judges. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

June 16, 2016



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William Jay Riley, Chief Judge  
Eighth Circuit