

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-16-90058 / 08-16-90059

In re Complaint of John Doe¹

These are two judicial complaints filed on August 30, 2016, by a pro se civil litigant against the United States magistrate and district court judges who presided over complainant's civil rights action.

Complainant brought an action under 42 U.S.C. § 1983, among other federal and state laws, asserting four employees of a state insurance department violated his state and federal rights. Adopting the magistrate judge's report and recommendation, the district judge dismissed, with prejudice, complainant's federal action for failure to state a cognizable claim under § 1983, and dismissed his accompanying state law claims without prejudice.

First, complainant claims he wanted reassignment of his case outside of the district in which he filed his action because the judges whom he complains about "where [sic] defendants in a case that [he] had before this court." Complainant also complains about the price of the filing fee in federal court, stating it is "totality [sic] outrageous" in comparison to the much smaller state court filing fee, concluding the federal filing fee "is nothing more than discrimination [sic]."²

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.

²We note the district court granted complainant's application to proceed *in forma pauperis*; thus, complainant apparently paid no filing fee.

Next, complainant argues the magistrate judge “should have known better” than to state that “a lawsuit against state employees in their official capacity is the same as suing the state.” Complainant explains he did not submit a “proposed amendment” with his motion to amend his complaint “because the court has not given [him] the permission to do so.” Complainant challenges the district judge’s denial of his objections to the magistrate judge’s report and recommendation, claiming such findings were “clearly erroneous and . . . not supported by a preponderance of the evidence in view of the entire record as submitted.”

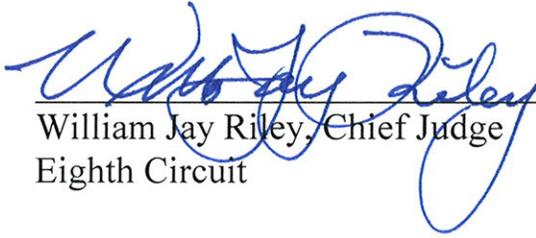
The remainder of the judicial complaint consists of unquoted excerpts from the magistrate judge’s report and recommendation followed by an allegation that such findings were “clearly erroneous” and “not supported by a preponderance of the evidence in view of the entire record as submitted.” Finally, in response to the magistrate judge’s finding the complainant cited several nonexistent state statutes, complainant admits he “made a mistake” by citing incorrect statutes in his complaint, but encourages us to look up the correct provisions so that we may “tell what they all mean.”

This judicial complaint must be dismissed because complainant’s primary allegation is that the district judge improperly dismissed his case. This assertion, which “calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(3)(A). Judicial complaints challenging rulings “directly related to the merits of a decision” must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); see also J.C.U.S. Rule 11(c)(1)(B); E.C. Rule 4(c)(2). Challenges to the merits of the district judge’s decision should be considered on direct appeal. See 28 U.S.C. § 1291.

Any remaining allegations relating to an inference of bias or discrimination against complainant lack sufficient evidence “to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii).

The complaint is dismissed.

November 2, 2016



William Jay Riley, Chief Judge
Eighth Circuit