

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-16-90061

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

This is a judicial complaint filed on September 12, 2016, by a state inmate against the United States district court judge who is presiding over the complainant's ongoing civil rights lawsuit against employees of a state correctional center.

Complainant notes he was "forced to appeal to the Eighth Circuit" upon the district judge's initial dismissal of his case. On October 7, 2014, the court of appeals reversed the district judge's dismissal of complainant's retaliation claim and remanded for further proceedings. On June 25, 2015, the district judge denied in part and granted in part the defendants' motion for summary judgment and dismissed two defendants. In March 2016, the district judge entered a protective order limiting the scope of the complainant's discovery against the remaining defendants.

✓ The judicial complaint alleges complainant has "received bias, unfair and prejudicial treatment in [the district judge's] handling of [complainant's] lawsuit." Upon filing a "motion for fraud on the court" against the defendants, complainant attests the district judge "ignored [complainant's] evidence, scolded [him] for filing the motion and reversed his original decision granting the defendants' motion to dismiss."

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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.

Complainant claims he has been “consistently . . . disadvantaged by [the district judge’s] prejudicial conduct and decisions contrary to established law and court rules.” Complainant alleges a particular defendant “unequivocally should not have been dismissed because there were several genuine issues in dispute as to her role in the retaliatory actions of the defendants.” Complainant also accuses the defendants in the underlying suit of refusing to provide him with copies of “material documents” and depositions. Complainant asserts he “has no recourse in this case” because the district judge has allowed the defendants “to lie, conceal [sic] material evidence, refuse to issue plaintiff evidence he is in need of and entitled to by law and rule.” Although complainant acknowledges he is not entitled to appointment of counsel, he contends that unless the district judge grants his request for counsel, complainant “will certainly be put in a position to lose this case because I don’t know how to do any of this.” Finally, complainant requests that we reassign his case to another district judge and “sincerely investigate this situation.”

The allegations in this judicial complaint are directly related to the merits of the district judge’s decisions and procedural rulings and are not cognizable subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); 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). While allegations of personal bias or other improper conduct are not necessarily merits related, such allegations must be dismissed as merits related when, as is the case here, the only support for the allegation of bias is the merits of the judge’s rulings. See id.

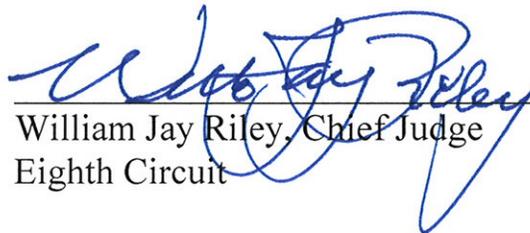
Complainant has not indicated any non-merits-related reason why he believes the district judge “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” or “is unable to discharge all the duties of office by reason of mental or physical disability.” 28 U.S.C. § 351(a). The claims

in this judicial complaint also “lack[] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see also J.C.U.S. Rule 11(c)(1)(D). Further, the reassignment of judges typically is not within the province of the judicial complaint process.

Finally, the judicial complaint procedure is limited to United States judges and does not apply to attorneys or other state government agents whose conduct the complainant discusses in this judicial complaint. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaint is dismissed.

November 1, 2016

  
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William Jay Riley, Chief Judge  
Eighth Circuit