

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-16-90062

In re Complaint of John Doe¹

This is a judicial complaint filed on October 5, 2016 by a detainee against the United States district court judge who is currently presiding over complainant's criminal charges involving conspiracy to distribute marijuana.

In January 2014, during complainant's arraignment, the district judge denied complainant's request for release on bail, resulting in what complainant calls "a cruel, oppressive jail sentence in a detention center." Complainant accuses the district judge of "remov[ing] [complainant's] presumption of innocence" when the district judge stated:

And one of the things that I have been consistent on is when a defendant is on state probation and commits violations of federal law while on supervision, I almost always detain, because that indicates to me that the person, while on parole, is still out committing criminal activity.

This statement, complainant claims, shows the district judge, "in essence," sentenced complainant by forcing him to spend two years—"amount[ing] to a 26 month prison sentence"—in detention, while the majority of his co-defendants were released on

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 judge complained about are to remain confidential, except in special circumstances not present here.

bail. Complainant says, “I am aware that it is illegal for a judge to practice law while sitting on the bench, yet this is what he was doing.”

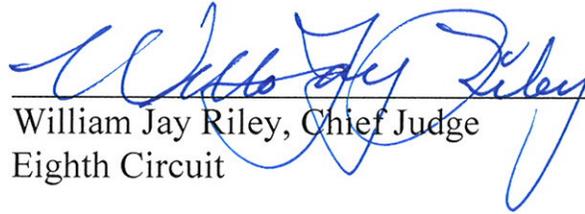
Complainant also accuses the district judge of aiding the prosecution during a suppression hearing when, according to the complainant, the district judge interrupted one of the testifying police officers to point out an inconsistency between the witness’s testimony and another police officer who had testified earlier. Complainant complains the district judge “should not have interfered with this and allowed [complainant] to establish the fact that [the testifying officer] was lying under oath just to save the prosecution’s case against [complainant].” While a transcript of the hearing has not been made available to this court, a district judge is permitted to examine witnesses, see Fed. R. Evid. 614(b).

The complaints presented must be dismissed. “An allegation that calls into question the correctness of a judge’s ruling,” such as the district judge’s decision to deny bail to complainant, “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). Allegations “directly related to the merits of [the district judge’s] decision” must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); accord J.C.U.S. Rule 11(c)(1)(B). Although allegations of bias are not necessarily merits-related, such allegations must be dismissed as merits-related when, as in this case, the only support for the allegations is the merits of the judge’s rulings. See J.C.U.S. Rule 3(h)(3)(A). The unsupported allegations in this complaint are “frivolous [and] lacking 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)(C), (D); E.C. Rule 4(c)(3).

Complainant’s request to remove the district judge from the underlying proceedings must also be dismissed because 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.

December 12, 2016



William Jay Riley, Chief Judge
Eighth Circuit