

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-16-90068

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

This is a judicial complaint, supplement, and letter filed October 17, October 20, and November 21, 2016, by a pro se civil litigant against the United States district judge who was presiding over complainant's civil case. Complainant is the plaintiff in a case alleging a violation of federal employment laws. In this judicial complaint, complainant accuses the district judge of judicial misconduct by harboring an improper motive, including desire to assist a defendant in the lawsuit. On October 26, 2016, the district judge *sua sponte* recused himself from complainant's lawsuit.

During discovery, complainant learned his attorney was not admitted to practice in the federal district court where the lawsuit is pending. Complainant reported this to the district court clerk via email, alleging the attorney's representation thus far was "invalid" and asserting complainant was "the victim of [the attorney's] fraud." On September 26, 2016, the district court created a sealed electronic case filing labeled "Pro Se Motion to Discharge Attorney," containing an email complainant had sent to the district court. Complainant could not access the electronic case filing, but appears to have assumed it was a pro se motion "Requesting for [sic] a Scheduling and Planning Conference," asking the district court to declare the attorney's actions "void," complainant had mailed to the district court on September 22, 2016. Around that same time, complainant's attorney moved to

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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.

withdraw his representation of complainant. On September 27, 2016, the district court granted the “Pro Se Motion to Discharge Attorney” and the attorney’s motion to withdraw. Complainant claims the district judge “entirely ignored the real relief request in [complainant’s] motion.” The pro se motion complainant had sent, which complainant presumed the district court was addressing, was not actually received by the district court until October 3, 2016—after the order discharging the attorney had issued. Once the district court granted the attorney’s discharge, complainant filed a “Motion to Vacate Scheduling Order and Discovery Plan” and a “Motion for Extension of Time to Complete Discovery.” After complainant had electronically served the defendants with these motions, but before the district court had received them through the mail, the district court docketed complainant’s motion “Requesting for [sic] a Scheduling and Planning Conference,” which complainant believed had already been docketed as the sealed electronic case filing “Pro Se Motion to Discharge Attorney.” Complainant alleges the district court “manipulated” the received date of this motion “despite of the fact that [sic] the received date should be no later than September 26, 2016.”

Complainant and the defendants’ attorneys then communicated by email to set up a scheduling conference, and although complainant had not requested expedited relief and suggested the scheduling conference not be held until “after [complainant’s pending] motions docketed,” the conference call took place on October 7, 2016. Complainant notes defendants “had not submitted any written responses,” and questions why the district court had not yet received the pending motions by the date of the conference when complainant had mailed those motions October 4, 2016. Complainant suggests the motions’ ultimate October 11, 2016 time stamp is “incredible.”

Several months earlier, complainant filed a motion to restrict the defendants’ ability to take back a laptop which complainant had used in connection with his employment, and complainant alleged contained large numbers of emails with

evidentiary value. In complainant's letter submitted after the district judge's recusal, complainant claimed one of the defendant's attorneys told complainant "they would hire a private firm to knock my residence door to collect the laptop if I refuse to hand it to [the defendant]." Complainant alleges the district judge's "silences to the laptop relief request during the motion processing were deliberate and coordinated acts, they belong to a pre-designed plan."

Complainant charges the district judge with "twist[ing] [complainant's] pleadings, creat[ing] document received dates, manipul[at]ing the filing dates, and unit[ing] [with the defendant's] attorneys to manipulate proceedings." According to complainant, before becoming a federal judge, the district judge worked for the same law firm representing the defendant—"in other words, [the district judge] had . . . years of colleague relationship with [defendant's counsel]." Complainant also proposes circumstantial evidence of the district judge's "improper discussions" with defendant's attorneys and evidence which complainant claims demonstrates concerted agreement between those attorneys and the district court regarding certain motions. Complainant makes clear this judicial complaint is only against the district judge—not against the defendant's attorneys or the district court clerk office staff.

The allegations in this judicial complaint must be dismissed. "An allegation that 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). Although allegations of judicial bias, improper motive, and impermissible ex parte communications are not necessarily merits-related, such allegations must be dismissed as merits-related when, as in this case, the only support for the allegation of bad acts or motive is the merits of the judge's rulings. *See id.* Having reviewed the exhibits submitted with the judicial complaint and the district court record, these allegations must be dismissed as "frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); *see* J.C.U.S. Rule 11(c)(1)(C), (D); E.C.

Rule 4(c)(3). The circumstantial evidence complainant has presented does not demonstrate or imply any improper motive or bias or give rise to an inference of impropriety on the part of the district judge; nor do the district judge's rulings on complainant's motions in the underlying case. See id.

To the extent complainant's claims are based on the alleged delay in docketing his motions, those claims must also be dismissed for the same reasons—complainant has not presented sufficient evidence to demonstrate the district judge had any involvement or any improper motive in the direction of the district court clerk's office or staff. See, e.g., J.C.U.S. Rule 3(h)(3)(B).

The complaint is dismissed.

December 22, 2016



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William Jay Riley, Chief Judge  
Eighth Circuit