

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-16-90073/08-16-90074

In re Complaints of John Doe¹

These are judicial complaints filed December 5, 2016, by a pro se inmate against the United States district court judge who dismissed his civil case for failure to prosecute and the United States district court judge who dismissed the complainant's motion to vacate his sentence.

In August 2016, following his period of incarceration, the complainant left the halfway house to which the Bureau of Prisons assigned him allegedly to visit his ailing mother in Missouri. The complainant contends he attempted to file several documents in his various civil cases, but United States Marshals, while searching for him, intercepted those documents and did not submit the documents to the court for filing. The complainant also claims the judges assigned to his cases discussed the cases with the U.S. Marshals. According to the complainant, a U.S. Marshal told the complainant one of the judges was "pissed off with" the complainant and another judge said he would "punish [the complainant] by dismissing his case." In addition, the complainant says the U.S. Marshals told the complainant the judge instructed them not to file the complainant's motion that the Marshals intercepted. The complainant argues it was "improper" for the judges to discuss his lawsuit with the U.S. Marshals and that the judges had "no justification" to instruct the Marshals "to

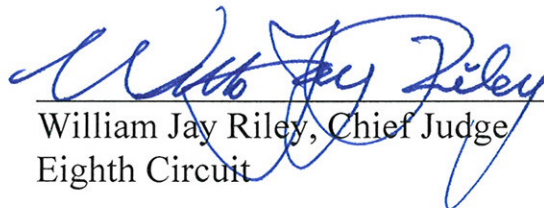
¹Under Rule 4(f)(1) of the Eighth Circuit Rules Governing Complaints of Judicial Misconduct and Disability, the names of the complainant and the judges complained about are to remain confidential, except in special circumstances not present here.

not docket anything [the complainant] sent to the court.” Following these conversations, the complainant reports the judges dismissed his cases. The complainant requests the judges be reprimanded and his cases be re-opened and re-assigned to different judges.

The complainant does not allege any judicial misconduct because the complaints’ allegations are “lacking 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 facts alleged do not establish either judge had “improper discussions with parties or counsel for one side in a case,” J.C.U.S. Rule 3(h)(1)(C), because the U.S. Marshals involved in the complainant’s alleged discussions with the judge are not parties to either of the cases at issue. The other facts in the complaints only allege the two judges dismissed his cases to “punish” him. The dismissal in the complainant’s civil case actually was “without prejudice for failure to prosecute” and not on the merits. The complainant’s contentions must be dismissed because they are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); see J.C.U.S. Rule 11(c)(1)(B). While it is true allegations of conspiracy and improper motive are not necessarily related to the merits, such allegations must be dismissed as merits-related when, as here, the only support for the allegations is the judge’s rulings. See J.C.U.S. Rule 3(h)(3)(A).

The complaints are dismissed.

February 2, 2017



William Jay Riley, Chief Judge
Eighth Circuit