

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-17-90009

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

This is a judicial complaint filed on January 20, 2017, by a pro se litigant against a district judge who denied the complainant's petition for a writ of error coram nobis.

In 2001, the complainant was charged with three counts related to his involvement in a drug conspiracy. The complainant entered into a plea agreement, in which he stipulated to one count and certain relevant conduct in exchange for the government dismissing the two other counts. He was sentenced to a prison term of 151 months. In 2016, the complainant filed a pro se petition for a writ of error coram nobis, challenging an alleged defect in the indictment approximately fifteen years earlier. After granting the complainant *in forma pauperis* status, the district judge denied the complainant's petition because the two alleged problems were "immaterial" to his sentence and "refuted by the record."

The complainant now recycles these arguments about the allegedly defective indictment in his judicial complaint. According to the complainant, the district court judge "found erroneously that the plea agreement holds more weight than the indictment." And the "[c]omplainant can't find any other reason than a complete cover up . . . for him to continue to be ignored when it comes to this issue." The

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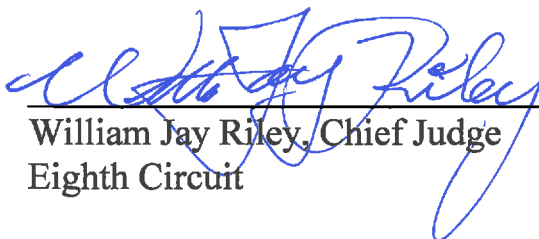
<sup>1</sup>Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

complainant suggests the district judge’s decision to “continue[] to hold complainant to the defective indictment” constitutes “misconduct that interfered with the performance of [the judge’s] judicial duties.”

As an initial matter, although the complainant signed the judicial complaint, there is no indication he did so “under oath” or “under penalty of perjury.” E.C. Rule 2(f) (“The complaint form *must* be signed and the truth of the statements verified in writing *under oath*. As an alternative to taking an oath, the complainant may declare under *penalty of perjury* that the statements are true.” (emphasis added)); cf. 28 U.S.C. § 358(a) (“Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each considers to be appropriate.”). In any event, the complaint’s allegations are “directly related to the merits of a decision or procedural ruling” and therefore are not a proper subject for a judicial conduct proceeding, requiring dismissal. 28 U.S.C. § 352(b)(1)(A)(ii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); see also id. Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.”).

The complaint is dismissed.

March 9, 2017



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William Jay Riley, Chief Judge  
Eighth Circuit