

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90040

In re Complaint of John Doe¹

This is a judicial complaint and a supplemental complaint filed by a pro se inmate against a United States magistrate judge who ruled against his civil claim.

The complaint alleges that the magistrate judge's conduct demonstrated improper influence on his decision making, conflict of interest, judicial bias, and failure to perform judicial obligations during the complainant's 2015 evidentiary hearing. The complainant contends that the magistrate judge failed to enforce an order requiring a former defense attorney for complainant to provide an affidavit of his defense strategy for complainant's 1983 civil rights lawsuit. The complainant alleges that the magistrate judge failed to enforce the order because the attorney is the magistrate judge's friend. The complainant also maintains that his former attorney lied twice on the witness stand, became ill in the middle of testimony, left the courtroom, and never returned. According to the complaint, these acts of judicial misconduct ultimately resulted in the complainant's continued incarceration.

The complainant's supplemental pleadings charge the judge with "improper influence, other improper or illegal activities including off bench conduct, communicating improperly with only one side to a proceeding . . . manifesting or otherwise abetting in malfeasance, failure to report criminal misconduct, and trumping of the complainant's constitutional rights to due process."

These allegations are directly related to the merits of the judges' decisions or procedural rulings and are not cognizable in 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.) Rules 3(h)(3)(A), 11(c)(1)(B).

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

Allegations of judicial bias or other improper motive are not necessarily merits-related. However, such allegations must be dismissed as merits-related when, as in this case, the only evidentiary support for the allegation of judicial bias or improper motive is the merits of the judges' rulings. *See* Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Accordingly, the complaint must be dismissed.

August 17th 2017

A handwritten signature in cursive script, appearing to read "Lavenski R. Smith", is written over a horizontal line.

Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit