

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90049

ORDER

In re Complaint of John Doe¹

This is a judicial complaint filed May 18, 2017, by a pro se prison inmate against a United States district court judge who allegedly retaliated against the complainant for exercising his protected rights.

The complaint alleges that the judge “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts...” and that said misconduct also includes “willful misconduct in office, willful and persistent failure to perform duties of office, habitual intemperance, and other conduct prejudicial to administration of justice.” The complaint asserts that the district judge retaliated against the complainant for bringing four previous civil case filings, the present criminal case, and a previous revocation matter. The complainant contends that the district judge displayed willful and prejudicial misconduct when the judge sua sponte and without any notice, ordered a 45-day pre-competency evaluation (rather than the statutory 30-day evaluation), omitted reference to any specific present behavior or conduct that the complainant was “suffering from diminished capacity,” and ordered a facility transfer that deliberately bypassed a BOP “suitable facility” nearest the complainant, as required by law.

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.

The complainant also alleges that during the same time of transfer, the district judge, the U.S. Marshall, and the U.S. Attorney conspired together, and removed relevant documentation from the complainant's files. The complainant contends "that the loss of all legal material caused the dismissal of three civil suits, and that this is substantial loss of liberty." Thus, the complainant alleges, these acts violated the his constitutional due process rights.

These allegations are directly related to the merits of the respective 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).

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 21, 2019



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