

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90050

In re Complaint of John Doe¹

This is a judicial complaint filed on May 18, 2017, by a pro se litigant against the United States district judge presiding over the complainant's case. Before the district judge, the complainant sought a new trial relating to his state-court conviction. The complainant framed the action as arising under 28 U.S.C. § 1983 as opposed to a petition for writ of habeas corpus under 28 U.S.C. § 2254. The district judge noted that the complainant had two previously dismissed cases related to his state-court conviction. The first was a § 1983 case, and the second was a § 2254 petition. The district judge construed the complainant's most recent complaint as a § 2254 petition and dismissed it; alternatively, the district judge found that a § 1983 claim would be barred by the statute of limitations. "In either case," the district judge reasoned, "the present action is duplicative" of the prior cases.

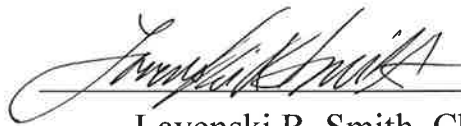
The complainant alleges that the district judge discriminated against him in adjudicating his most recent case. He asserts that he is not an inmate nor is he "in custody"; therefore, no reason exists for him to file a § 2254 petition. He contends that the district judge's "choice of words on his latest decision against [him] proves his bias." The complainant also asserts that the district judge had a conflict of interest and erroneously refused his request for in forma pauperis status.

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 support for the allegation of bad motive is the merits of the judge's ruling. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conferences of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B). Additionally, the allegations must be dismissed because they are “frivolous, [and] lack[] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(C)–(D). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

August 30, 2017



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