

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90053

In re Complaint of John Doe¹

This is a judicial complaint filed on June 1, 2017, against a United States magistrate judge by a lawyer who represented a party in lawsuit in which the magistrate judge presided. Because the out-of-state lawyer associated with local counsel, the magistrate judge had granted the lawyer's motion for admission *pro hac vice* to participate in the lawsuit. The lawyer (and local counsel) did not appear at a pretrial conference, and the magistrate judge sanctioned the lawyer. After the first local counsel withdrew, the lawyer found substitute local counsel. Sometime thereafter, a hearing was held at which the lawyer (and local counsel) did not appear. Pursuant to the magistrate judge's inherent authority, the magistrate judge sanctioned the lawyer for failing to appear at the hearing.

The complainant acknowledges that neither he nor local counsel appeared in court on two separate occasions. However, he alleges that the magistrate judge discriminated against him based on race, national origin, and state of origin by "impos[ing] monetary sanctions totaling over \$1,000 on me, only and to be paid personally by me, but . . . not impos[ing] any sanctions on my *pro hac vice* lawyers, even though . . . *pro hac vice* attorneys are mandated to appear in the presentation of the case." He concludes that the magistrate judge must have discriminated against him on the aforementioned grounds because the only differences between him and

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.

local counsel are that (1) he is black and they are white, (2) he is an out-of-state attorney and they are in-state attorneys, and (3) he is of Nigerian origin and they are European origin.

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