

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90084

In re Complaint of John Doe¹

This is a judicial complaint filed by an incarcerated pro se litigant against the United States district judge who dismissed the pro se litigant's petition for writ of mandamus ("petition") with prejudice.

The judicial complaint challenges the district judge's dismissal of the petition. The complainant alleges that he mailed his petition on Friday, July 28, 2017, and the district judge dismissed his petition on Tuesday, August 1, 2017. The complainant asserts that "[t]his must be the quickest turn around time for the filing, dismissal and return of a petition by mail in history, a total of five business days, without affording [the complainant], a pro se litigant, any opportunity to correct or perfect [his] pleading/complaint."

These allegations are directly related to the merits of the district judge's 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). 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).

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 complaint is dismissed.

September 25, 2017

A handwritten signature in black ink, appearing to read "Lavenski R. Smith", written over a horizontal line.

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