

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No.08-17-90097

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In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by pro se civil litigants against a United States district judge who dismissed the litigants' civil lawsuit.

The judicial complaint arises from the district judge's dismissal of the pro se civil litigants' lawsuit under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. The judicial complaint alleges that the district judge feigned application of the Rule 12(b)(1) standard and instead ruled on the merits of the litigants' claim pursuant to Federal Rule of Civil Procedure 12(b)(6). The judicial complaint alleges that the district judge was intentionally deceptive in ruling on the merits "under the guise of subject matter jurisdiction . . . in order to dismiss with prejudice so as to avoid a refiling of the complaint."

The judicial complaint's allegations are "directly related to the merits of a decision or procedural ruling" and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B). The complaint only calls into question the correctness of the district judge's ruling, and, as such, is not cognizable misconduct. *See* J.C.U.S. Rule 3(h)(3)(A) ("An allegation

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<sup>1</sup>Under 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.

that calls into question the correctness of a judge's ruling . . . without more, is merits-related.”).

The complaint is dismissed.

December 26<sup>th</sup> 2017



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