

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90053

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se civil plaintiff against the district judge who dismissed the plaintiff's civil action without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii) for failure to state a claim. The district court determined that the only named defendant was immune from suit under the doctrine of judicial immunity. The judicial complaint alleges that “[t]he court has failed to address many outstanding requests for Findings” in its handling of the civil action.

To the extent the judicial complaint alleges that the district court has delayed in ruling on outstanding motions, such allegation must be dismissed. Any alleged delay in rendering a decision or ruling in a particular case is not conduct prejudicial to the effective and expeditious administration of the business of the courts within the meaning of 28 U.S.C. § 351(a), the judicial complaint statute. Rather, this type of alleged delay is excluded as merits related. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(3)(B). To the extent the judicial complaint challenges the district judge's dismissal of the civil action, the 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* J.C.U.S. Rule 11(c)(1)(B).

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.

In addition to the present judicial complaint, complainant made numerous other frivolous filings to this court. Complainant is cautioned that he could be barred from filing judicial complaints in the future if it appears complainant is abusing the judicial complaint procedure. *See* E.C. Rule 1(f) (permitting the Review Panel, “after affording the complainant an opportunity to respond in writing,” to “requir[e] the complainant to obtain prior permission of the chief judge of the circuit before filing another complaint” if the complainant “abuses the complaint procedure”); *see also In re Petition of Doe*, 70 F.3d 56, 60 & n.1 (8th Cir. Jud. Council 1995) (Hansen, J.) (providing impetus for E.C. Rule 1(f)).

The complaint is dismissed.

October 29, 2018



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