

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90054
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In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against two United States district judges: one judge presided over the inmate's cases and the other judge is the chief judge of the district. The judicial complaint concerns the district judges' handling of the inmate's complaint about his former lawyer who represented the inmate in his habeas case.

The judicial complaint alleges that the complainant hired the lawyer to represent him in his habeas case on May 11, 2011. On May 24, 2012, the lawyer filed a habeas petition on behalf of the complainant. On July 10, 2012, the lawyer was suspended from the practice of law by the State Supreme Court's Committee of Professional Conduct. The clerk's office for the United States district court in which the district judge and chief judge sit received notification of the lawyer's two-month suspension. On December 28, 2012, the district judge dismissed the habeas petition as time-barred. On January 10, 2013, the lawyer moved for relief from judgment on behalf of the complainant based on the lawyer's alleged mistake and excusable neglect. On January 25, 2013, the lawyer moved to withdraw as the complainant's counsel. On January 30, 2013, the district judge granted the motion for relief from judgment and the lawyer's motion to withdraw, but the district judge again denied the

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.

petition for habeas relief. On July 22, 2013, the lawyer filed a reinstatement petition with the State Supreme Court's Committee of Professional Conduct requesting to be reinstated to practice law within the jurisdiction.

On April 24, 2018, the clerk's office confirmed via letter to the complainant that it had received notification of his former lawyer's two-month suspension beginning July 10, 2012, and that the "matter was forwarded to the Chief Judge." On July 11, 2018, a letter from the complainant to the clerk was docketed in the habeas case again advising that his former lawyer had his license suspended. On June 25, 2018, the complainant filed suit against his former lawyer pursuant to a local rule and the incorporated Uniform Federal Rules of Disciplinary Enforcement. The district judge who presided over the habeas case also presided over this case. On July 19, 2018, the complainant sent the chief judge a letter advising that the complainant had received notification from the clerk's office that the chief judge knew of his former lawyer's suspension. The complainant claimed that the chief judge "may have allow[ed] a fraud upon the court because . . . [the lawyer] did not submit his Reinstatement Petition . . . until July 22, 2013." As a result, the complainant asked the chief judge to void the district judge's orders in the habeas case. On July 26, 2018, a second letter from the complainant to the clerk was docketed in the habeas case advising that his former lawyer had his license suspended. On August 21, 2018, the district judge dismissed the complainant's lawsuit against his lawyer without prejudice for failure to state a claim. However, the district judge directed the clerk to provide a copy of the complainant's lawsuit to the chief judge so that the chief judge could determine the appropriate action. On August 30, 2018, the complainant moved for nunc pro tunc relief in the habeas case, requesting that the district judge initiate a proceeding against the lawyer pursuant to the Federal Rules of Disciplinary Enforcement. On September 5, 2018, the district judge denied the motion, noting that the judge had issued orders about the complainant's disciplinary complaint in the suit against his former lawyer.

The judicial complaint alleges that the chief judge “failed to comply with the law; to promote public confidence in the independence, integrity, and impartiality of the Judiciary based on the fact that [the chief judge] received notification . . . that [the complainant’s former] attorney[‘s] . . . law[] license has been [s]uspended from practicing law within the jurisdiction.” The complainant argues that after receiving notification of his former lawyer’s suspension, the chief judge “had an obligation to compel [the clerk] to issue a notice [to his former lawyer] and order him to show cause within (30) days why [the district court] sh[ould] not impose the identical discipline, Rule II(B)(2), Federal Rules of Disciplinary Enforcement.” The judicial complaint also alleges that once the district judge presiding over the habeas case was informed by the clerk that the complainant’s former lawyer’s license has been suspended, the district judge “had a duty and responsibility to disqualify [the lawyer] from practicing law in.”

To the extent the judicial complaint alleges that the chief judge and district judge did or have delayed in acting on the notification of complainant’s former lawyer’s suspension, such an 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 (1) the district judge’s denial of the complainant’s motion for nunc pro tunc relief in the habeas case; (2) the district judge’s dismissal of the complainant’s lawsuit against the former lawyer; or (3) the district judge’s and chief judge’s handling of the former lawyer’s suspension, 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* J.C.U.S. Rule 11(c)(1)(B).

The complaint is dismissed.

October 25th, 2018



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