

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90080

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against the United States district judge who has presided over three of the inmate's civil rights actions. In the first action, the district judge dismissed the case after determining it was barred by the three-strikes rule. *See* 28 U.S.C. 1915(g).² In the second action, the district judge determined that although it previously determined that the three-strikes rule barred the inmate from bringing a new civil action, the inmate's allegations fell within the exception to the rule. After dismissing two of the defendants without prejudice, the district judge ordered the third defendant to respond to the complaint.³ In the third action, the inmate joined with others to file the case. They requested to proceed as a class action. The district judge summarily dismissed the case without prejudice. Relevant to this judicial complaint, the district judge noted that the inmate

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.

²Prior to the district court's dismissal of the first action pursuant to the three-strikes rule, the inmate had filed an interlocutory appeal challenging the district judge's order dismissing two claims, but permitting another claim to proceed. Because one claim was still pending and there was no final judgment, this court dismissed the appeal for lack of jurisdiction. Contrary to the inmate's representation in the judicial complaint, this court did not "reverse[] and remand[] [the inmate's] [pending] claim in response to [the district judge's] dismissal."

³At this time, this action is still pending.

or more prior prisoner actions or appeals dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted.

The judicial complaint alleges that the district judge “treats [the inmate’s] cases in a demonstrably egregious and hostile manner via preservice summary dismissal.” The inmate believes that the district judge is engaged in a “personal campaign to punish and retaliate against [the inmate] for previous cases dismissed against him, to prevent [the inmate] from ever gaining access to administration of justice.” The judicial complaint also challenges the court clerk’s assignment of the inmate’s actions to the district judge, asserting that the court clerk did not assign the cases via a “blind draw.” According to the judicial complaint, the district judge’s “uninterrupted record of dismissal of [the inmate’s] cases and the Local Rule deviating questionable circumstances surrounding the string of court clerk assignment of [the inmate’s] cases straight to [the district judge’s] docket is highly suspicious and points to the likelihood that [the district judge] engaged in” judicial misconduct. The judicial complaint asserts that the inmate “was denied access to the administration of justice via ‘blind draw’ case assignment” and was “subjected to the hostile attitude and personal bias of [the district judge] via successive summary dismissal of all of [the inmate’s] civil rights petitions.” The judicial complaint requests that (1) the district judge be removed from three civil rights actions, (2) the court clerk be prohibited from assigning the inmate’s cases to the district judge, and (3) the three civil rights actions be reinstated.

The judicial complaint’s bare, speculative allegations that the district judge dismissed the inmate’s civil rights actions due to hostility or bias and that the district judge conspired with the court clerk to assign the inmate’s cases to the district judge are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C)-(D). To the extent the judicial complaint challenges the dismissal orders, the allegations are directly related to the merits of the judge’s decisions or procedural

rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B).

The complaint is dismissed.

December 11th, 2018



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