

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-18-90092  
JCP No. 08-18-90093

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

This is a judicial complaint filed by a pro se inmate against two United States district judges. The judicial complaint challenges the dismissal of the inmate’s civil rights complaint. The district judge who dismissed the complaint construed it as a petition under 28 U.S.C. § 2254 for writ of habeas corpus. The district judge observed that the inmate had “already filed multiple petitions under § 2254” and determined that the inmate had failed to “obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2254.” As a result, the district judge dismissed the petition. The district judge who entered the dismissal order did so prior to the defendants in the lawsuit answering the complaint.

The judicial complaint alleges that instead of waiting for the defendants to respond to the petition, the named judges engaged in judicial misconduct by “answering and arguing against the jurisdictional question.” The judicial complaint asserts that this conduct violated the inmate’s right to due process. The judicial complaint requests that “the district court’s prior . . . denial orders . . . be vacated and the case remanded to the . . . district court.”

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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.

The judicial complaint's allegation is "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); *see also* J.C.U.S. Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related."). Accordingly, the allegation must be dismissed.

The complaint is dismissed.

December 18, 2018



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