

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90003

In re Complaint of John Doe¹

This is a judicial complaint filed by pro se litigants against the United States district judge who presided over the government's foreclosure action against the litigants, as well as the litigants subsequent lawsuit against the government and three federal agencies.

The record shows that the government filed a foreclosure action against the complainants. In addition to the complainants, the government named certain other entities as defendants because they "may claim an interest in the real estate." One of those entities, the complainants allege, "is a recipient of federal financial assistance from [a certain federal agency]." The district judge granted summary judgment in the foreclosure action to the government, and this court affirmed.

During the pendency of the foreclosure action, the complainants filed suit against the government and three federal agencies. The complainants filed a motion for recusal of the district judge based on the judge's adverse rulings against them in the foreclosure action. Specifically, the complainants alleged that the district judge "ha[d] continuously entered orders adverse to [the complainants'] fair and equitable prosecution of their claims and relevant factually supported defenses" in the foreclosure action. They asserted that the district judge's orders in the foreclosure

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.

action “all reflect a demonstrated history of bias” against them.” Additionally, they claimed that the district judge’s role as the presiding judge in the foreclosure action gave him “personal knowledge of disputed material facts” relevant to their lawsuit against the government. The district judge denied the recusal motion. In addition, it granted the government’s motion to dismiss the complainants’ lawsuit. On appeal, this court affirmed the district court’s dismissal of the lawsuit and denial of the recusal motion.

Subsequently, the complainants petitioned for rehearing en banc and by the panel and moved to supplement the record in their appeal of the district judge’s dismissal of their suit against the government. In their motion to supplement the record, they alleged that they had “newly discovered evidence which demonstrates [the district judge’s] financial interest which should have given rise to an order of recusal.” Specifically, the complainants alleged that the district judge “has significant financial interests in [two] organizations that have repeatedly intervened before [a federal commission] on behalf of [the complainants’] adversary.” This “adversary” was one of the named defendants in the foreclosure action that had a purported interest in the complainants’ real estate. Attached to the motion, the complainants appended a financial disclosure form in which the district judge indicated an “interest” in the named organizations. This court denied the complainants’ petition for rehearing en banc and by the panel and denied the motion to supplement the record.


In their judicial complaint, the complainants now allege that the district judge “failed to disclose that [the judge] had a financial interest in [the cases].” The complainants cite the same “newly discovered evidence” as raised in their motion to supplement the record in their appeal of the district judge’s denial of their recusal motion. Again, they assert that district judge’s financial disclosure form reveals the district judge’s purchase of “stock” in the two organizations, which they claim are “both affiliates of [their adversary].” They contend that the two organizations that the district judge “has [a] direct financial interest in” repeatedly intervened on behalf of

[the complainants' adversary] before [a federal commission]." According to the judicial complaint, the district judge exhibited bias based on this financial interest. The judicial complaint rejects as "patently false" the argument that the complainants "simply sought recusal of [the district judge] based on [the judge's] 'unfavorable rulings.'" It asserts that recusal was proper because the district judge has a "financial interest at stake," resulting in the judge's "inherent bias and prejudice against [the complainants]." Additionally, the judicial complaint alleges that the district judge "knowingly misapplied the standard on a summary judgment motion and subsequently misapplied the standard [on a] Rule 60(b) motion."

I have obtained a response from the district judge and fully reviewed the record. The complainants' allegations against the district judge must be dismissed because they are directly related to the merits of the judge's recusal decision and are therefore not proper subjects of a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B) (effective before March 12, 2019). "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, *including a failure to recuse*, without more, is merits-related." J.C.U.S. Rule 3(h)(3)(A) (effective before March 12, 2019) (emphasis added). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

April 4th 2019



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