

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90015

In re Complaint of John Doe¹

This is a judicial complaint by a pro se inmate against the United States district judge who denied the inmate's pro se motion to reopen the restitution portion of the inmate's amended criminal judgment pursuant to the All Writs Act, 28 U.S.C. § 1651.

The record shows that the government had requested two changes to the restitution portion of the criminal judgment. The district judge granted the request without conducting a hearing. The amended judgment did not alter the total amount of restitution that the inmate owed or the payment schedule. A year after entry of the amended judgment, the inmate filed a motion pursuant to 28 U.S.C. § 2255, challenging the entry of the amended judgment that adjusted the restitution order from the original judgment. The district court denied the motion, and this court affirmed. The inmate then moved to reopen the restitution portion of the criminal judgment through § 1651. In that motion, the inmate requested that the district judge "re-open the restitution portion of [the] judgment to remedy the misinformation provided to the [c]ourt by the [g]overnment, so that those who are named payees who have not suffered financial loss due to the fraud [the inmate] ple[aded] guilty to conspiring to commit may be removed from [the] judgment." The district judge denied the motion.

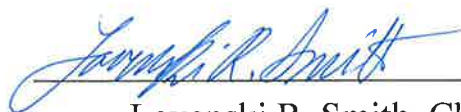
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

The judicial complaint alleges that in denying the inmate's motion to reopen, the district judge "blindly followed the [government's] false allegations and ruled in agreement with the [government's] fraudulent allegation which is in total contradiction with [the district judge's] prior ruling." The judicial complaint alleges that the district judge's "action shows bias in repeatedly ruling in agreement with the [government], regardless of facts and evidenced presented." According to the judicial complaint, "The [district] [j]udge's bias and par[t]ial[i]ty to the [government], resulted in the [inmate] receiving triple the amount of prison time than the crime warranted."

These allegations are directly related to the merits of the district judge's decisions or procedural rulings and are not cognizable in 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.) Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge was biased, these allegations are "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(C)-(D). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

April 15, 2019



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