

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90019

JCP No. 08-19-90020

In re Complaint of John Doe¹

This is a judicial complaint by a pro se litigant against the United States magistrate judge who recommended dismissal of the litigant’s civil lawsuit and the United States district judge who adopted the magistrate judge’s report and recommendation and dismissed the lawsuit without prejudice.

The record shows that after the litigant filed suit, the defendant’s counsel submitted a letter to the magistrate judge opposing the litigant’s application for *in forma pauperis* status. In that letter, counsel stated, “Although not specifically provided for by the rules, after consulting with Court staff I file this correspondence in objection to [p]laintiff[‘s] . . . Application to *Proceed in Forma Pauperis* . . . on behalf of Defendant *Should the Court determine that this filing is improper, please strike or disregard it.*” (Bold omitted.) The defendant subsequently moved to dismiss the lawsuit, and the litigant moved to strike the motion to dismiss. The magistrate judge recommended that the district judge grant the dismissal motion and deny the motion to strike. The district judge adopted the magistrate judge’s report and recommendation and dismissed the lawsuit without prejudice. As to the motion to strike, the district judge rejected the litigant’s argument that the defendant’s “counsel had improper ‘ex parte consultation with court staff’” when the defendant filed its

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.

letter opposing the litigant's *in forma pauperis* application. The court noted that the defendant "was actually required to obtain permission to file a letter with the Court under this District's CM/ECF procedures." It also cited the defendant's willingness "to have the court strike or disregard the letter if deemed improper." Like the magistrate judge, the district judge "s[aw] no evidence in the record that [the defendant's] decision to obtain permission to file the letter was improper." Therefore, the district judge denied the motion to strike.

The judicial complaint alleges that the magistrate judge and district judge "us[ed] the power of their respective offices to obtain special treatment for [the defendant] and by extension its hired attorney." The judicial complaint alleges that the judges (1) "[s]uppress[ed], conceal[ed], and intentional[ly] fail[ed] to adjudicate [the litigant's] [c]omplaint allegations"; (2) had "improper discussions with [the defendant] by advocating for or aiding and abetting [the defendant's] self-confessed *Ex-Parte* Consultation by substituting defenses never plead by [the defendant] and relabeling or rewording or substituting [the] [d]efendant's voluntarily used words and phrases '[c]onsultation with court staff' for 'permission to file a letter with the court'; (3) treated the litigant in an "egregious and hostile manner" by giving special treatment to the defendant and its attorney, "imputing serial attributions to" the litigant, and "refusing to acknowledge" evidence unfavorable to the defendant; (4) "fail[ed] to adjudicate [the litigant's] complaint allegations" and instead "aid[ed], abett[ed], and sustain[ed] [the defendant's] false and misleading, misrepresented facts; (5) "denied [the litigant's] Due Process right to appear and be heard on the factual [c]omplaint's allegations with an invidious motive to ensure and prevent production of hearing transcripts for meaningful and effective appeal of any outcome decisions; and (6) "suppressed [the litigant's] complaint allegations in showing unbridled favor to [the defendant] and [its attorney] by attempting to impose and supplant its determination of a fully executed . . . contractual agreement not properly before the court."

The complaint also alleges that the magistrate judge “engaged in a fact-finding expedition; failed to consider and make findings of fact with respect to [the litigant’s] [c]omplaint allegations”; and “relied on [the defendant’s] misrepresentations, derailment, and misleading versions of facts.”

These allegations are directly related to the merits of the magistrate judge’s and 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 magistrate judge and district judge were biased, treated the litigant in an “egregious and hostile manner,” and suppressed or concealed evidence, 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.

May 2d, 2019



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