

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90034

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se litigant against the United States district judge who dismissed the litigant's civil action for failure to state a claim upon which relief can be granted and because the district judge found jurisdiction lacking.

The pro se litigant's civil complaint alleged that several defendants, including two attorneys, restricted the litigant's right to free speech, defamed the litigant, invaded the litigant's privacy, and retaliated against the litigant. The district judge dismissed the litigant's First Amendment claims with prejudice because none of the defendants were state actors. The district judge also dismissed the litigant's Title VII retaliation claim with prejudice because the litigant "was not employed by defendants and suffered no adverse employment action." Finally, the district court dismissed the litigant's "defamation and invasion of privacy claims . . . without prejudice because they are state tort claims over which this court has no jurisdiction; the parties are not diverse and the amount-in-controversy does not exceed \$75,000."

The judicial complaint alleges that one of the defendant attorneys encouraged clients not to respond to the litigant's lawsuit and that both the defendant attorneys ignored the interrogatories that the litigant submitted. According to the judicial complaint, the district judge dismissed the litigant's complaint because the litigant's

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.

“complaint and interrogatories were ignored.” The judicial complaint maintains that the district judge failed “to protect the judicial process” by not reporting the defendant attorneys for their “misconduct” in ignoring the interrogatories.

To the extent the allegations challenge the district judge’s dismissal order, they are directly related to the merits of the district judge’s decisions 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 failed to protect the judicial process by not reporting alleged attorney misconduct, such allegation is “frivolous [and] lack[s] 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.

October 28th, 2019



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