

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90046

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 without prejudice the litigant's breach-of-contract action.

The record shows that the litigant filed a motion to proceed *in forma pauperis* and a motion to appoint counsel. The district judge granted the litigant's motion to proceed *in forma pauperis*. But the district judge then screened the litigant's complaint and concluded that the litigant "has no claim under federal law" based on the facts set forth in the complaint. Specifically, the district judge concluded that (1) the litigant lacked standing to assert injury on behalf of family members, (2) none of the federal statutes and regulations that the litigant relied on "creates a private right of action," (3) the Assistant United States Attorney that the litigant sued "has immunity against suit for his decision not to pursue criminal charges," and (4) the litigant pleaded no facts about one of the defendant's personal involvement. The district judge noted that the litigant "may have a claim under [state] law" against certain defendants, but it found a lack of "diversity of citizenship among the parties or a federal question presented." Finally, the district judge denied as moot the litigant's motion for a lawyer. The district judge subsequently entered a judgment dismissing the case without prejudice.

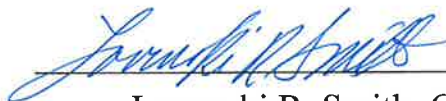
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

The judicial complaint challenges certain factual statements and legal conclusions set forth in the district judge's order. It also alleges that the district judge erred in "refusing to [r]ule" on the litigant's motion to appoint counsel. The judicial complaint further alleges bias based on the district judge's dismissal of the case prior to the defendants answering the complaint.

These allegations challenge the district judge's order and are directly related to the merits of the judges' decision 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 bias, 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 ^{ch} 28, 2019



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