

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-20-90009
JCP No. 08-20-90010
JCP No. 08-20-90011

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against the United States circuit judges who affirmed the district judge's denial of the complainant's motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(2) in the complainant's civil rights action.

The judicial complaint alleges that the circuit judges "extort[ed] [the complainant] for [\$]505.00 by *not* going by the law and protecting [the complainant against the district judge's] abuse of discretion relating to [the complainant's] complaint on [certain state] officials."

The record shows that the district judge dismissed the complainant's civil rights action for failure to state a claim. The Eighth Circuit summarily affirmed. After the district judge's dismissal order, the complainant filed a motion for relief from judgment under Rule 60(b)(2), arguing that the complainant had proven that the adverse jury verdict against the complainant was wrong and requesting that the case be reopened and that the complainant be relieved from the court's judgment. The district judge denied the motion, reasoning that habeas corpus was the exclusive

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.

remedy by which the complainant could challenge confinement. The complainant then moved again to reopen the case under Rule 60(b), arguing that defense counsel in the state court proceeding was ineffective, that the complainant was denied the ability to present evidence in state court, and that the prosecutor was not immune from suit. The district judge denied the motion, finding that the state court ruling had no bearing on the § 1983 claim. The complainant appealed, requesting that the Eighth Circuit read his Rule 60(b) motions together and reopen the civil action. The complainant also moved for leave to proceed on appeal in forma pauperis. The circuit judges summarily affirmed the district court. The circuit judges granted the complainant's motion for leave to proceed in forma pauperis. The circuit judges assessed "[t]he full \$505 appellate and docketing fees" against the complainant, "permitted [the complainant] to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2)," and "remand[ed] the calculation of the installments and the collection of fees to the district court."²


The judicial complaint's allegation that the circuit judges extorted money from the complainant 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* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) 11(c)(1)(C), (D). The judicial complaint's allegation that the circuit judges failed to follow the law in summarily affirming the judgment of the district judge is directly related to the merits of the circuit judges' decision and is not

²The Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915, is applicable to the complainant's case. "[T]he PLRA 'makes prisoners responsible for their filing fees the moment the prisoner . . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). "[W]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan." *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 4(b)(1), 11(c)(1)(B).

The complaint is dismissed.

3/6 _____, 2020

A handwritten signature in blue ink, reading "Lavenski R. Smith", is written over a horizontal line.

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