

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-21-90062
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In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge and United States magistrate judge assigned to the complainant’s civil rights action.

The judicial complaint alleges that the district judge and magistrate judge “deliberately failed” to timely order service on the defendants under Federal Rule of Civil Procedure 4 and 28 U.S.C. § 1915(d). The judicial complaint also alleges that the judges conspired with the defendants in not ordering service. According to the complainant, after service was ordered on the defendants, the complainant did not receive a copy of the summons.

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). The record shows that the complainant filed a motion for status and a motion for contempt. The magistrate judge granted the motion for status, explaining that the complainant’s “[c]omplaint . . . is currently under review by the Court. Once this review is complete, the Court will direct service upon the applicable Defendants for

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.

claims which survive screening, if any.” The magistrate judge ordered the clerk to send the complainant “an updated copy of the docket sheet.”

In the motion for contempt, the complainant argued that the district judge and magistrate judge were “in contempt for failing to timely order service on Defendants.” The magistrate judge explained that the court must first screen the complainant’s complaint prior to ordering service. “Due to the backlog of cases,” the magistrate judge continued, “the screening of [the complainant’s] claims did not occur as quickly as [the complainant], or the Court, would prefer. However, . . . [the] claims are undergoing screening now, which is as soon as practicable, under the circumstances.” The magistrate judge advised the complainant that once screening was complete, the magistrate judge would direct service on the defendants for any cognizable claims.

Thereafter, the record reflects that a summons was issued as to all defendants. The complainant then made a motion for copies. The magistrate judge granted the motion “to the extent that the Clerk is directed to mail [the complainant] an updated copy of the docket sheet.”

To the extent that the judicial complaint’s allegations challenge orders of the district judge and magistrate judge, they must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge and magistrate judge conspired to delay service on the defendants and conspired to deprive the complainant of notice, the allegations are “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 judicial complaint is dismissed.

May 16, 2022



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