

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-21-90069

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In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge who was originally assigned to the complainant’s petition for writ of habeas corpus.

The judicial complaint alleges that the district judge “illicitly denied” the complainant’s motions for stay and abeyance of his habeas corpus proceeding. The complainant alleges that the respondent’s attorney and other state agents “unlawfully prepared and submitted several orders for [the district judge].” The complainant further asserts that the respondent’s attorney and other state agents “had already prepared and submitted three (3) [o]rders for [the district judge] in this habeas action before [the respondent’s attorney] even entered [an] appearance.” According to the complainant, “Ex parte communications between [the district judge] and [the respondent’s attorney] clearly occurred concerning [the complainant’s] pending federal habeas corpus action in that none of the mentioned prepared and submitted [o]rders bear any notation of ‘[p]repared [b]y’ [the respondent’s attorney] or any other agents for the State.” The complainant states that the district judge gave “special treatment” to the respondent’s attorney and other state agents. The complainant asserts that even after the complainant obtained counsel and counsel moved to stay proceedings, the district judge entered an “illicit prepared and submitted [o]rder”

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<sup>1</sup>Under 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.

prepared by the respondent's attorney that granted the motion in part and denied it in part. The complainant alleges that this order "supports bias and impropriety in that [the district judge] did not give [the complainant's] third [m]otion to [s]tay *any* consideration as all of [the district judge's] determinations were and are always are in favor of [the respondent's attorney] or the [r]espondent."

The judicial complaint also alleges that the district judge and the respondent's attorney attempted to "force [the complainant's] federal habeas corpus proceedings forward in the district court to collaterally estop [the complainant's] ongoing or pending [s]tate court proceedings in violation of [the complainant's] federal constitutional rights to petition the government for a redress of grievances and due process of law." According to the complainant, the district judge "illicitly denied" the complainant's motion to withdraw the habeas petition that the complainant had made in light of the "ongoing [s]tate court proceedings and the ill-motivated denial of [the] two previous motions to stay."

The judicial complaint additionally challenges the district judge's denial of the complainant's recusal motions. According to the complainant, the recusal motions were based on the district judge's "bias and impropriety." The complainant maintains that the district judge denied the motions

for the ill-motivated and illicit reasons of: (1) a technicality that [the complainant] did not file an affidavit with [the] first motion to recuse, and (2) [the district judge's] friend, [another district judge], unlawfully tolerated, covered up, and failed to remedy [the district judge's] unlawful misconduct by holding that [the complainant's] second motion to recuse was "untimely," [the complainant's] "accusations are premised entirely on unfavorable rulings," and "a judge-shopped attempt."

The judicial complaint alleges that the district judge displayed bias in not reassigning the habeas action to a different judge on a certain date.

Finally, the judicial complaint asserts that the district judge’s “bias and impropriety is also clearly demonstrated in [the complainant’s] habeas case by [the district judge’s] illicit [o]rders that the [r]espondent must file a reply brief to [the complainant’s] reply or file a notice stating the [r]espondent will not file a reply brief.”

“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4(b). To the extent that the judicial complaint’s allegations challenge the district judge’s orders, 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. Rule 11(c)(1)(B). To the extent that the judicial complaint alleges that the district judge acted illicitly, engaged in ex parte communications with the respondent’s attorney, was biased against the complainant, conspired with the respondent’s attorney or another judge, or otherwise engaged in improper conduct, 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)(D).

Accordingly, the judicial complaint is dismissed.

May 23, 2022



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