

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90042

In re Complaint of John Doe¹

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

The judicial complaint alleges delay in “issu[ing] the complaint with the Marshals,” delay in obtaining a scheduling order, misrepresentation of facts, erroneous dismissal of a retaliation claim, and erroneous failure to issue a certificate of appealability in the first civil-rights case.² It also alleges that the magistrate judge is related to one of the defendants in the second civil-rights case and should have recused.

I have reviewed the record. *See* J.C.U.S. Rule 11(b). The record shows that in the first civil-rights action, the complainant moved for a scheduling order on October 29, 2021. On January 6, 2022, the magistrate judge denied without prejudice the motion, explaining, “As this matter is still in its preliminary stages, [the complainant’s] various motions to compel discovery, for summary judgment, and 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.

²The judicial complaint also challenges the Deputy Clerk of Court’s letter to the complainant advising that “pursuant to the policy of the court, all document requests will be forwarded to the warden of your facility.” The Deputy Clerk of Court is not a “covered judge.” *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 1.


a scheduling order are premature and will be denied without prejudice.” On April 21, 2022, the magistrate judge recommended that the district court permit the complainant to proceed with certain claims but “dismiss the remainder of [the] claims,” including the retaliation claim. On June 24, 2022, the district court adopted the magistrate judge’s report and recommendation.

In the second civil-rights action, the complainant sued several defendants, including a defendant with the same last name as the magistrate judge. On May 12, 2022, the complainant filed a memorandum objecting to a report and recommendation of the magistrate judge. In that memorandum, the complainant argued that the magistrate judge should not be rendering any opinions on the case because one of the defendants had the same last name as the magistrate judge and, as a result, “a clear conflict of interest[]” existed. On May 19, 2022, the district court adopted the magistrate judge’s report and recommendation.

To the extent that the judicial complaint’s allegations challenge the magistrate 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. Rules 4(b)(1), 11(c)(1)(B); J.C.U.S. Rule 3(h)(3)(A) (“Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Further “[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” J.C.U.S. Rule 4(b)(2). The complainant has shown neither an improper motive nor habitual delay. Finally, the judicial complaint’s allegation that the a conflict of interest exists because the magistrate judge has the same last name as a defendant fails for “lack[] [of] 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.

July 21, 2022



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