

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-15-90007, 08-15-90008

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate on May 11, 2015, against the United States district judge who presided over complainant's criminal prosecution and the United States magistrate judge who also presided over parts of complainant's criminal prosecution and his subsequent 28 U.S.C. § 2255 petition. Complainant alleges the two judges, "in concert with one another, have (A) thoroughly abused their power and/or abused their discretion, (B) clearly demonstrated judicial bias, (C) obviously committed judicial misconduct, and (D) clearly perpetrated fraud on the court."

Specifically, complainant claims the district judge "initiated and participated in an impermissible out-of-court and off-the-record ex parte communication" with complainant's attorney. During this conversation, complainant contends the district judge "rendered extra-judicial legal advice" regarding a potential motion to disqualify the attorney that caused complainant's attorney later to withdraw his representation of complainant.

Complainant additionally alleges the magistrate judge "had [complainant's § 2255 petition] transferred to her" because she and the district judge "'schemed' together . . . to delay adjudicating [complainant's] § 2255" petition. According to

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

complainant, the magistrate judge “maliciously and intentionally” delayed ruling on the § 2255 petition for nearly three years to protect the district judge from the allegations of his misconduct within the petition. And complainant asserts when the magistrate judge did issue a report and recommendation on his § 2255 petition, she “maliciously committed a ‘plethora of lies’” that “constituted ‘fraud upon the court’” by falsely stating complainant did not have the court’s permission to file certain documents.

Many of complainant’s allegations must be dismissed because they are “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); see Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); E.C. Rule 4(c)(2). “An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.” J.C.U.S. Rule 3(h)(3)(A). Although claims of judicial bias, collusion, and abuse of power are not necessarily merits related, these complaints must be dismissed as merits related when, as here, the only support for the allegations is the merits of the judges’ rulings. See id.


Complainant’s claim of delay must also be dismissed as merits related. See id. Rule 3(h)(3)(B). “[A] complaint of delay in a single case is excluded as merits-related” because it “challenge[s] the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.” Id. commentary to Rule 3.

Claims of impermissible ex parte communications and intentional false statements within a judicial opinion could be cognizable misconduct, see id. Rule 3(h)(1), (2), but after thoroughly reviewing complainant’s voluminous evidence and the record in his criminal case, it is clear these complaints must be dismissed as “frivolous [and] lacking sufficient evidence to raise an inference that misconduct has

occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rule 11(c)(1)(C), (D); E.C. Rule 4(c)(3).

The complaint is dismissed.

May 29, 2015



William Jay Riley, Chief Judge
Eighth Circuit