

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP Nos. 08-16-90026/08-16-90027/08-16-90028

In re Complaints of John Doe and Jane Doe¹

These are two judicial complaints filed on March 7, 2016 by a criminal defendant and his wife against the United States district judge and two magistrate judges who presided over the husband's criminal trial. The complaints are identical. The complainants raise a number of issues related to a jury trial, including that the husband "never recognized any understanding of any complaint, indictment, or charge," "was never asked to plead to any of these things," and never "voluntarily plead[ed] to any of the things." The complainants also report the husband "never agreed to any trial by jury knowing that any jury that would be summons [sic] would not be a jury of [the husband's] peers.

The complainants further contend the husband did not receive the district judge's orders in response to his pretrial motions in the mail and challenge the district judge's refusal to discuss those motions on the record before beginning jury selection on the first day of trial.² When the husband attempted to continue discussing these issues and told the district judge "he doesn't have the right or power to shut [the husband] up," the district judge, in the complainants' words, told the husband he

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

²The complainants acknowledge the husband was provided with copies of these documents at the end of the first trial day, and also received copies by mail the following day.

would be “removed” if he was not “quiet” and “stand by counsel would represent [the husband].” The husband was removed from the courtroom and placed in a cell where he states “the air conditioning [was] on so high and the cell [was] so cold [it] was torture in itself.” The complainants opine the district judge committed “misconduct” by advising the jury the husband complainant “had to be taken out of the courtroom for not following his rules” and by “speak[ing] poorly about [the] husband to the jury.” The complainants also assert the district judge “ha[d] improper discussions with counsel for it to be one sided in this matter.”

The complainants charge the district judge with misconduct and “[d]iscrimination against litigants on account of race, ethnicity, sex, or other legally protected attribute; also violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.” The complainants further allege the district judge was “dismissive and rude” and “short and disrespectful.” According to the complainants, the district judge’s “actions violate[d] Amendments 5, 6, 8, 10, and 13 of the US Constitution, Article 1, Sections 1, 2, 6, 8, 9, 10, 12, 13, 17, 18, 22, and 25; and Article 11 Section 5 of the Constitution [of the forum state]; as well as, Articles 1 through 15, 21, 27 through 30 of the Universal Declaration of Human Rights” and the “Judicial Canons from the Guide to Judiciary Policy Volume 2, Ethics and Judicial Conduct, Part A: Codes of Conduct, Chapter 2: Code of Conduct for United States Judges; 1, 2 (A), 3 (A, 1-6), and 3 (B 1 and 3).”

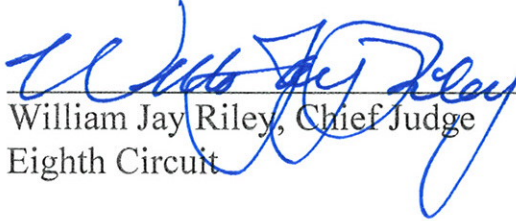
The complainants proclaim the husband’s “life is in danger, continuously,” when he is in jail and in “the federal court building,” and he is “in fear of being harmed” by any food or drink provided by the United States Marshals. Finally, the complainants report the husband’s mail in jail is being tampered with. The complainants do not make any allegations against the magistrate judges named in the complaint.

The complainants' challenges to the district judge's decisions regarding the husband's motions and the jury selection process are not cognizable in a judicial complaint because they are "directly related to the merits of a decision or procedural ruling." See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Council of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B). "Misconduct" also 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. Rules 3(h)(3)(B). Having reviewed and found no misconduct in the trial transcript, the complainants' only evidence the district judge was discriminatory or rude are the judge's rulings themselves, so these allegations also must be dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B). These unsupported assertions, and to the extent the complainants make allegations the district judge engaged in financial misconduct, "lack[] sufficient evidence to raise an inference that misconduct has occurred" and are "frivolous." 28 U.S.C. § 352(b)(1)(A)(iii); accord J.C.U.S. Rule 11(c)(1)(C).

The complainants' complaints against the magistrate judges also must be dismissed because it is not possible to ascertain from the complaints the bases for the complainants' belief that these judges are disabled or have engaged in misconduct. Finally, to the extent the complainants challenge the actions of U.S. Marshals, the postal service or its employees, the U.S. Attorney's office or its employees, the county jail or its employees, or other individuals who are not United States judges, these complaints are beyond the scope of the judicial complaint procedure because the judicial complaint procedure is limited to United States judges. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c).

The complaints are dismissed.

April 6, 2016



William Jay Riley, Chief Judge
Eighth Circuit