

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90014/08-17-90015

In re Complaints of John Doe¹

These are judicial complaints filed in January 2017 by a pro se civil litigant against the United States magistrate judge and district court judge who are currently presiding over the complainant's case for social security benefits.

The "basis for this complaint of misconduct" is that the magistrate judge "acted without jurisdiction or authority to adjudicate any matters in regard to the rights of the parties." But see 42 U.S.C. § 405(g); Minn. Local R. 7.2(a)(1), (4). So far the magistrate judge has issued two orders: the first granted the complainant's application to proceed *in forma pauperis* but declined to appoint him counsel, and the second denied the complainant's motion for sanctions against opposing counsel. These orders, the complainant contends, "constituted usurpation and the exercise of power not belonging to [the magistrate judge] under Article III of the United States Constitution" and "were prejudicial" to the complainant's case. The complainant claims the magistrate judge was "negligent," and the district judge assigned to the case "no less negligent," for failing to address these alleged "actions of misconduct." Opposing counsel's failure to join in the complainant's crusade against the magistrate judge's involvement also draws ire from the complainant, but the complainant notes both parties will have "every right to raise these grounds on appeal" after a judge rules on their competing summary judgment motions. To the complainant, this case

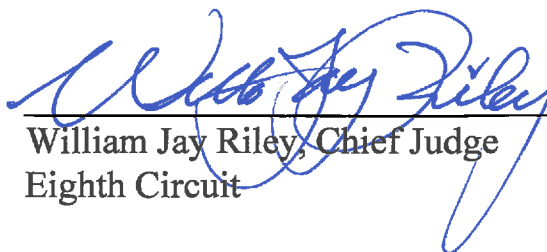
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

reveals the judiciary's attitude of, "Let's screw with the pro se guy' because he is not an attorney and he is least likely to be able to defend against what we do." Though the complainant "takes no joy in taking this action," he claims "the danger this type of misconduct poses effects [sic] everyone involved in the system and causes disrespect and the lack of confidence in the legal system."

The complaint must be dismissed because it is "directly related to the merits of a decision or procedural ruling" in that it challenges the magistrate judge's authority to issue the aforementioned orders. 28 U.S.C. § 352(b)(1)(A)(ii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); see also J.C.U.S. Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related."). The proper vehicle to raise these arguments is a motion or an appeal, not a judicial complaint. To the extent the complainant makes claims against opposing counsel or non-judges, those claims are not appropriate for the judicial complaint process either. See 28 U.S.C. § 351(d)(1); J.C.U.S. Rule 4 ("A complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363."). Otherwise, the complainant's charges against the magistrate and district judges are "frivolous." 28 U.S.C. § 352(b)(1)(A)(iii); accord J.C.U.S. Rule 11(c)(1)(C).

The complaint is dismissed.

March 7, 2017



William Jay Riley, Chief Judge
Eighth Circuit