

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-17-90017

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

This is a judicial complaint filed on February 13, 2017, by a pro se civil litigant against the United States district court judge presiding over the complainant's case.

The complainant is an inmate at a state-run correctional facility, and has filed suit in federal court alleging various state officials rendered inadequate medical care. The complainant now accuses the district judge of:

[1]. Having improper ex-parte communication with the [state] Attorney Generals which is forbidden; and [2]. treating complainant of litigation outrageous misconduct offensive, hostile manner; and [3]. Intentionally discriminating against complainant on account of race and other protected attribute for exercising rights, violating I, V, XIV Amendments to the U.S. Constitutions [sic], and infringing 42 U.S.C. §§ 1985(3), 1986 statute.

The complainant lists these three grievances, but does not frame the factual allegations within the judicial complaint around them. Rather, the judicial complaint focuses on a discovery dispute regarding the complainant's medical records and his difficulties in obtaining those records. As he did in the district court, the complainant blames his struggles on the defendants in his civil case and an employee from the

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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 judge complained about are to remain confidential, except in special circumstances not present here.

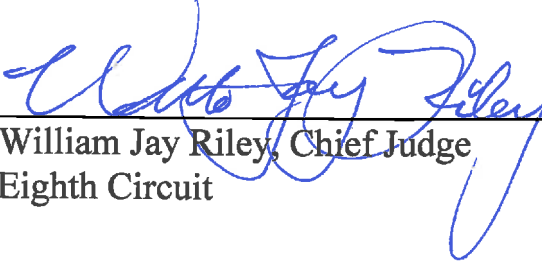
state attorney general’s office, and now adds the district court judge to the list for “outrageous personal bias” and “retaliatory misconduct.” Together, the complainant argues, these individuals have conspired to deprive him of due process, equal protection, and other constitutional rights. The complainant offers no specific allegations as to how the district court judge was biased or retaliatory other than lamenting the fact many of the complainant’s motions have been denied. Nor does the complainant explain the nature of any alleged conspiracy or ex parte communications involving the district court judge and the others, besides suggesting that group is jointly responsible for the lack of success in his civil case.

The judicial complaint must be dismissed because it is “frivolous, [and] lack[s] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); accord Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C)-(D). Bona fide allegations of improper ex parte communications and judicial bias are cognizable. See J.C.U.S. Rule 3(h)(1)(C)-(D). But the judicial complaint here, while alleging this type of misconduct broadly, is void of any specific allegation of improper communication or identifiable instance of bias—such vague and unsupported allegations do not give rise to an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii). Instead, the judicial complaint focuses its attention on the complainant’s civil case, his difficulty in obtaining discovery, and the district court judge’s adverse rulings. These claims are merits-related, and therefore not capable of redress through the judicial complaint process. See id. § 352(b)(1)(A)(ii); 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.”). To the extent the complainant makes claims against the defendants in his civil case, an employee in the state attorney general’s office, or any other non-judge official, those claims are similarly unsuited for resolution in a judicial complaint. 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.”).

The complaint is dismissed.

March 8, 2017



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William Jay Riley, Chief Judge  
Eighth Circuit