

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90018

In re Complaint of John Doe¹

This is a judicial complaint filed on February 21, 2017, by an inmate against the district court judge who presided over the complainant's criminal case.

In early 2015, the complainant was charged with conspiring to escape from a federal correctional facility. He pled not guilty and was appointed counsel. The trial was originally set for March 30, 2015, however due to three continuances the trial was pushed back to November 14, 2016. During this time the complainant grew frustrated with the delays—which were ordered based on unopposed motions from his attorney or his co-conspirator's attorney—and claims he told his attorney he “want[ed] trial ASAP. I think my 6th Amend [sic] rights have Already been violated.” The complainant became “so concerned about [his] Rights that [he] wrote the Judge.” The complainant concludes the district court judge must have “ignored” the letter because it did not stop the district court judge from granting the third and final continuance. The complainant then accused his attorney and the district court judge of “conspir[ing] to break [his] constitutional Rights,” and he requested new counsel. The district court judge denied the request. The complainant filed two additional motions requesting new counsel, and the district court judge granted a hearing. At the hearing, the complainant alleges, his attorney attempted to explain the reason for a prior continuance motion with “a total 100% lie. And the Judge knew

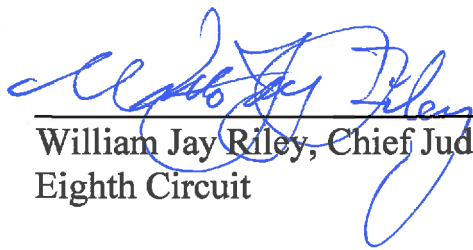
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

it.” The district court judge supposedly “ignored This Lie” because “trial was in 10 days.” As a result of all these allegations, the complainant contends the district court judge “violated [his] 5th Amend [sic] Right to due process. Allong [sic] with conspiring to violate the speedy trial Act.”

The judicial complaint attacks the district court judge’s orders continuing the complainant’s trial and declining to appoint him new counsel. These attacks are “directly related to the merits of a decision or procedural ruling” and therefore must be dismissed. 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 complainant also challenges decisions made by his attorney, but those cannot be resolved through 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.”). This leaves the complainant’s bare, speculative allegations that the district court judge conspired with the complainant’s attorney, but these claims “lack[] 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).

The complaint is dismissed.

March 9, 2017



William Jay Riley, Chief Judge
Eighth Circuit