

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-17-90054

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

This is a judicial complaint filed on June 1, 2017, by a pro se civil litigant against the United States district judge who dismissed the complainant's civil lawsuits. The complainant, an inmate, filed two actions in federal district court. The first action was a § 1983 action complaining of allegedly improper state convictions. *See* 42 U.S.C. § 1983. Because the complainant failed to pay the filing fee or submit all necessary financial documents in support of the application, the district judge ordered the complainant to complete a disclosure form or risk dismissal of the case. The complainant complied. The district judge ultimately dismissed the § 1983 case based on "two insuperable bars to relief": "a two year statute of limitations" and the failure to allege "that his convictions have been overturned." The complainant also filed a second pro se action in which he failed to pay the filing fee or submit an application to proceed in forma pauperis. He did so based on his belief that the district judge has been "extorting" the filing fee from him and then wrongfully dismissing the case. The complainant requested that a special panel of the Ninth Circuit (instead of the Eighth Circuit) investigate the district judge's assessment of filing fees in cases which are dismissed prior to serving notice on the defendants and asked the district judge to transfer the case to the Ninth Circuit. The district judge denied the request and ordered the case dismissed.

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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 judicial officer complained against are to remain confidential, except in special circumstances not here present.

The judicial complaint alleges that the district judge has deprived the complainant of due process and his right of access to the courts by extorting the filing fee from him and then dismissing his cases. The complaint also alleges that the district judge has blocked any court or panel from investigating this allegedly unethical behavior by dismissing the complainant's cases.

These allegations must be dismissed because they are directly related to the merits of the judge's decision or procedural rulings and are therefore not proper subjects of a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conferences of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B). An appeal is the proper way to challenge the merits of a judge's rulings. Additionally, the allegations must be dismissed because they are "frivolous, [and] 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)(C)–(D). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

August 30, 2017



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Lavenski R. Smith, Chief Judge  
United States Court of Appeals  
for the Eighth Circuit