

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90056

In re Complaint of John Doe¹

This is a judicial complaint filed on July 13, 2017, against a United States district judge by a pro se litigant. The pro se litigant, a federal inmate, had filed an action that he had characterized as a declaratory action, seeking his immediate release. The district judge had previously denied the inmate's § 2255 motion and dismissed three subsequent filings as successive § 2255 motions. *See* 28 U.S.C. § 2255. The district judge concluded that the inmate could not avoid the limitation on successive habeas petitions by labeling his declaratory action as such; because the inmate failed to obtain the Eighth Circuit's authorization before filing a second or successive § 2255 motion, the district judge dismissed the inmate's motion without prejudice.

According to the judicial complaint, the district judge “disregard[ed]” the inmate's right to appeal. The complaint alleges that the district judge “may have engaged with” another district judge “in conduct prejudicial to the effective and expeditious administration of the busines[s] of the court.” It also alleges that the district judge “suffers from a mental or physical disability resulting in an inability to discharge the duties of office.”

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

The complaint's allegations 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."). As to the complainant's bare, speculative allegations that the district judge conspired with another district judge and suffers from a mental defect, such allegations are "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); J.C.U.S. Rules 11(c)(1)(C), (D).

The complaint is dismissed.

September 4th, 2017



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