

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90064

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se litigant against the United States district judge who dismissed his § 1983 action. *See* 42 U.S.C. § 1983. In relevant part, the district judge dismissed most of the litigant’s claims with prejudice after concluding that the litigant failed to allege facts plausibly showing that personal jurisdiction existed over particular defendants. Additionally, the judge determined that transferring the action to another district court would be futile either because the litigant’s claims against these defendants was barred by the applicable statute of limitations or because no factual allegations supported the claims.

The judicial complaint includes two parts, with the first part challenging the district judge’s dismissal of the § 1983 action. To support this challenge, the complainant attached to the judicial complaint a “Motion Pursuant to Rule 60(b) F.R. Civ. P. to Obtain Relief from a Judgment Under Subds. (1) (2) (3) and (6)” that was filed in federal district court. In that motion, the complainant argues that the district judge committed judicial misconduct by undertaking the defendants’ defense when the district judge “us[ed] Rule[s] 8 and 12 of the Federal Rules of Civil Procedure” in the absence of “some response from the defendants.” The complainant asserts that the district judge “never [saw] fit to allow in forma pauperis status to have the plaintiff’s summons and complaint served upon any of the defendants which must be

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.

accomplished before Rules 8 and 12 may even apply to the matter at hand.” The district judge recently denied the complainant’s Rule 60(b) motion. The judicial complaint’s allegations are directly related to the merits of the district judge’s decisions and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 3(h)(3)(A), 11(c)(1)(B). Accordingly, they must be dismissed.

The second part of the judicial complaint concerns “a high profile case the district court presided at where the complainant was not a party to the proceedings.” The complainant alleges that the district judge appeared on television, made statements about a high-profile case “that could not be considered as much more than a self promotion appearance for himself[,] and . . . conveyed a statement to the effect of ‘we did what needed to be done.’” The complainant alleges that “[i]t was also reported by one news source that the district court met with the victim’s family after the hearing or sentencing” but admits that he “has no independent evidence that this happened.” These 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).

The complaint is dismissed.

September 9th, 2017



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