

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90065

In re Complaint of John Doe¹

This is a judicial complaint filed by an incarcerated pro se litigant against a United States magistrate judge who issued proposed findings and recommendations in the litigant's § 1983 action. *See* 42 U.S.C. § 1983.

After the pro se litigant filed his § 1983 action, the magistrate judge permitted him limited discovery to determine the identity of an unknown defendant. Thereafter, the magistrate judge granted the defendants' motion to stay discovery pending resolution of their motion to dismiss. The magistrate judge subsequently recommended denial of that motion. The pro se litigant moved to lift the stay of discovery, which the magistrate judge denied without prejudice. The magistrate judge then issued an order directing the pro se litigant to provide the court with additional identifying information about a certain defendant's last-known address because the summons was unserved. In a later order, the magistrate judge did lift the stay of discovery in part. Subsequently, in his objections to one of the magistrate judge's proposed findings and recommendations, the pro se litigant moved the district court to disqualify the magistrate judge, but the district court denied that motion. The pro se litigant also filed a motion to recuse the magistrate judge. In that motion, the pro se litigant complained that the magistrate judge's prior rulings that stayed discovery pending resolution of the defendants' motion impeded his efforts to discover some

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.

of the defendants' identities. But the magistrate judge pointed out that he had ultimately lifted the stay; therefore, he was not clear how the pro se litigant was prejudiced. The magistrate judge found no evidence showing the magistrate judge's animus toward the pro se litigant or that the magistrate judge could not faithfully and impartially make decisions based on the law and the facts. The magistrate judge denied the motion to recuse.

The judicial complaint raises the issues previously identified in the motion to recuse. In addition, the judicial complaint alleges that the magistrate judge's orders are "spoon f[e]d" from the defendants and asserts that "the appearance of a joint endeavor [exists] between [defense counsel] and [the] magistrate [judge] of [them] improperly engaging in discussions in the absence of [the] opposing party." The complainant bases this allegation on the defense's filing of certain motions and the time span within which the magistrate judge ruled on those motions.

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 allegation that the magistrate judge improperly conversed with defense counsel, such allegation "lack[s] 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.

September 16th, 2017

A handwritten signature in black ink, appearing to read "Lavenski R. Smith", written over a horizontal line.

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