

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90083

In re Complaint of John Doe¹

This is a judicial complaint filed by an incarcerated pro se litigant against the United States magistrate judge assigned to his civil rights action.

The complainant petitioned for the preservation and protection of video evidence and subsequently filed a “Notice of Appeal and Designation of the Record” (“Notice”), which the magistrate judge construed as a motion for a ruling on the petition. The magistrate judge recommended that the complainant’s petition be denied and that the case be dismissed without prejudice. The district judge adopted the magistrate judge’s recommended disposition.

The judicial complaint alleges that the magistrate judge “failed to take any action on [the complainant’s] petition within the [designated time frame that the complainant] informed the [magistrate judge] that action needed to be taken to preserve and protect essential material evidence.” According to the complainant, the magistrate judge misconstrued his subsequent Notice “as a motion for a ruling . . . to cover for the fact that he did not act in a manner appropriate to have the essential material evidence preserved and protected.”

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.

These allegations are directly related to the merits of the magistrate judge's decisions or procedural rulings 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); *see also* J.C.U.S. Rule 3(h)(3)(B) (stating that cognizable misconduct “does not include . . . an allegation about delay in rendering a decision or ruling”).

The complaint is dismissed.

September 14th, 2017



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