

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90085

In re Complaint of John Doe¹

This is a judicial complaint filed by a nonparty against the district judge who presided over a criminal case involving the nonparty's relative. The nonparty had faxed a letter to the district judge outlining alleged lies that a probation officer wrote about the nonparty in the probation officer's recommendations concerning the nonparty's relative. Attached to that letter was a "Petition and Affidavit to Obtain Harassment Protection Order" against the probation officer. The district judge construed the faxed documents as a restricted miscellaneous motion, found that the nonparty's claims against the probation officer were frivolous and malicious, and denied the motion. The district judge explained that he had orally warned the nonparty not to send any further correspondence complaining about the probation officer. Additionally, the district judge warned the nonparty that any further harassment of the probation officer or the court could result in serious consequences, such as contempt of court.

The judicial complaint challenges the district judge's treatment of the complainant's letter. The judicial complaint alleges that the district judge "cosigned [the probation officer's] behavior and her lies and ignored [her] letter[]" and made the complainant—the victim of the alleged lies—"the villain." Specifically, the complainant asserts that the district judge "stated in open court that [the probation


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.

officer] was ‘not a liar,’” stated that the probation officer “was one of the best supervising probation officer[s],” warned the complainant not to send him any more “nutty letter[s],” and “would not allow [the complainant] to speak in his court.”

These allegations are directly related to the merits of the district 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). 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).

The complaint is dismissed.

September 16th, 2017

A handwritten signature in cursive script, appearing to read 'Lavenski R. Smith', is written over a horizontal line.

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