

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90095

In re Complaint of John Doe¹

This is a judicial complaint filed by an incarcerated pro se civil litigant against the United States district judge who presided over some of the complainant's civil rights actions.

The complainant alleges that the district judge improperly communicated with a U.S. Marshal who is a defendant in the most recent civil rights action that the complainant has filed. The complainant alleges as follows. In 2016, the complainant was assigned to a halfway house and absconded. The U.S. Marshal told the district judge that the complainant was a fugitive and that the district judge should dismiss one of the complainant's cases (to which the U.S. Marshal was not a party) to deter him from absconding again. The district judge, after allegedly having improper contact with this U.S. Marshal, dismissed the complainant's civil rights action.

Subsequently, in 2017, the complainant filed a civil rights action against the U.S. Marshal and moved for leave to proceed in forma pauperis (IFP). After filing the action, the complainant encountered the U.S. Marshal at the courthouse. The U.S. Marshal allegedly told the complainant, "I ain[']t got nothing to say to you at all, since you filed that lawsuit against me. I[']ve helped you out on prior occasions before, and you ain[']t ever [sic] got nothing coming from me." He then allegedly said, "You can bet your ass [the district judge] is gonna deny your IFP motion, and

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.

dismiss your case[.] I'll make sure of that.” Based on these alleged statements, the complainant is “deeply concerned that [the district judge] is having improper ex parte communication with one of the parties outside of [his] presence.”

As to the district judge’s dismissal of the 2016 civil action, the judicial 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.”). This is because in the district judge’s order dismissing the 2016 civil action, the district judge specifically states that it was “advised by the U.S. Marshal’s Service that plaintiff has absconded from the halfway house to which he was assigned by the Bureau of Prisons and that a warrant for his arrest has been issued.” For that reason, the district judge concluded that the complainant had abandoned his claims and dismissed the action with prejudice for failure to prosecute.

With respect to the judicial complaint’s bare, speculative allegations that the district judge engaged in improper ex parte communications with the U.S. Marshal in the 2016 and 2017 civil actions, such allegations “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)(D). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

October 25, 2017



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