

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90067

JCP No. 08-18-90068

JCP No. 08-18-90069

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against two United States district judges and a United States magistrate judge. The judicial complaint challenges the dismissal of the inmate’s civil rights complaint without prejudice. The district judge who dismissed the complaint concluded that the inmate is barred from filing a new action under 42 U.S.C. § 1983 *in forma pauperis* because the inmate “has previously been assessed three strikes pursuant to the [Prison Litigation Reform Act].” The district judge who entered the dismissal order did so prior to the defendants in the lawsuit answering the complaint.

The judicial complaint alleges that instead of waiting for the defendants to respond to the § 1983 complaint, the named judges engaged in judicial misconduct by “answer[ing]” the complaint and “argu[ing] against” the inmate. The judicial complaint also alleges that this conduct “deprived [the inmate] of due process” and violated Supreme Court precedent. The judicial complaint requests that the order dismissing the § 1983 complaint be vacated and that the case be remanded to the district court.

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.

The judicial complaint's allegation is "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."). Accordingly, the allegation must be dismissed.

The complaint is dismissed.

December 18, 2018



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