

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90079

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se civil litigant against the United States district judge who denied the litigant's verified petition to perpetuate testimony. *See* Fed. R. Civ. P. 27(a). The litigant sought an order permitting the litigant to depose certain officers of two corporations. Additionally, the litigant sought an order compelling the production of certain video footage in the corporations' possession. The depositions and video footage requested concerned claims that the litigant had not yet filed. The district judge determined that the litigant failed to demonstrate that the litigant was "presently unable to bring [the] claims as one or more separate lawsuits." *See* Fed. R. Civ. P. 27(a)(1)(A). The district judge concluded that the litigant was "attempting to use Rule 27 to conduct broad discovery into several unfiled claims, which the Rule was not intended to allow."

Following the district judge's denial of the petition to perpetrate testimony, the litigant filed a motion for recusal. The litigant alleged that the district judge displayed hostility and bias toward, and discriminated against, the litigant by ignoring evidence of the litigant's medical condition in denying the petition; previously represented one of the corporations and has ongoing relationships with the corporations; conspired with the corporations against the litigant; owns a substantial amount of stock in the

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.

corporations; and denied the litigant's petition to protect the corporations' interests. The district judge denied the motion for recusal.

The judicial complaint challenges the district judge's denial of the motion for recusal. The judicial complaint reasserts the allegations in the motion for recusal. Specifically, it alleges that the district judge "should ha[ve] recused" because the judge previously represented one of the corporations; conspired with that corporation to cover up its fraudulent conduct; "owns a large sum of stock in" that corporation; "has close ties with [that corporation's] legal counsel and [its] executives"; and wrongfully denied the litigant's petition to protect the judge's investments.

The judicial complaint fails to allege cognizable misconduct. "[C]ognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, *including a failure to recuse*, without more, is merits-related." Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 3(h)(3)(A)(1) (emphasis added). Furthermore, "[i]f the decision or ruling is alleged to be the result of an improper motive, *e.g.*, a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling . . . *the complaint is not cognizable to the extent that it attacks the merits. Id.* (emphasis added). Because the allegations in the judicial complaint attack the merits of the district judge's order denying the litigant's motion for recusal, the allegations are directly related to the merits of the judge's decisions or procedural rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B).

The complaint is dismissed.

December 18, 2018



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