

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-17-90087

In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint by a pro se inmate against the United States district judge who denied the inmate's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

In his § 2255 motion, the inmate argued that his appellate counsel was ineffective for not arguing on direct appeal that the inmate was denied his right to self-representation during voir dire proceedings. Specifically, the inmate contested his standby counsel's failure to oppose a certain venireperson being struck for cause by the district judge. The district judge, who had presided over the inmate's trial, determined that excerpts from the trial transcript demonstrated that the venireperson was unsuitable to be selected as a juror due to the venireperson's husband having an ongoing relationship with the inmate. The district judge also determined that the inmate was not denied his right to self-representation because he had an opportunity to object to the venireperson being stricken for cause based on the district judge's own motion. Finally, the district judge concluded that the inmate could not show prejudice because the venireperson was properly excused for cause by the district

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<sup>1</sup>Under 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.

judge. As a result, the district judge denied this claim. The inmate thereafter applied for a certificate of appealability with this court, which was denied.<sup>2</sup>

The judicial complaint alleges that, in striking the venireperson for cause, the district judge and his standby counsel “unconstitutionally exclude[d] [the inmate] with what appears to [be] an apparent pretextual intent.” The judicial complaint asserts that the district judge and standby counsel violated the inmate’s right to self-representation by not obtaining his consent to strike the venireperson.

These 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); 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). To the extent the judicial complaint alleges that the district judge acted with pretextual intent or showed bias or prejudice toward the inmate, these allegations are “frivolous, lacking 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). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

December 19<sup>th</sup> 2018



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

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<sup>2</sup>The judicial complaint alleges that the district judge “showe[d] apparent bias and impartiality” when the judge allegedly “recklessly withheld” the inmate’s application for a certificate of appealability filed with this court. As stated, this court received and ultimately denied the application.