

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90095

In re Complaint of John Doe¹

This is a judicial complaint by a pro se inmate against the United States magistrate judge who recommended that the district court deny the inmate's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2241.

The record reflects that after this court remanded the case to the district court for further consideration in light of a particular case, the magistrate judge directed the government to respond by a date certain as to whether the case provided the inmate with any relief. In turn, the inmate was given a certain number of days thereafter to file a surrepley. The inmate then moved for conditional release pending appeal and for appointment of counsel. The magistrate judge denied the motions. Thereafter, the government moved for an extension of time to respond to the magistrate judge's order for supplemental briefing. The same day, the magistrate judge granted the government's motion. Several days later, the inmate objected to the motion for extension of time. The government ultimately filed its supplemental pleading. The inmate then filed a pleading stating that the inmate had not received all briefs filed in the case and requested all documents filed within a certain period. The same day, the magistrate judge filed the proposed findings and recommendations, recommending that the district court dismiss the inmate's § 2241 petition with prejudice.

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 alleges that the magistrate judge erroneously denied the inmate's motions for conditional release and appointment of counsel. According to the judicial complaint, the magistrate judge has kept the inmate incarcerated in violation of the inmate's "right to be free from Cruel and Unusual Punishment." Additionally, the judicial complaint alleges that the magistrate judge never responded to the inmate's objection to the government's motion for an extension. (The judicial complaint overlooks the magistrate judge's order granting the government's motion, which was filed prior to the inmate's objection.) Finally, the judicial complaint maintains that the magistrate judge "has proven . . . favoritism with the Assistant U.S. Attorney and/or prejudiced towards inmates [and] . . . is now being legally prejudicial to [the inmate] and violating his rights to the 5th Amendment due process." The judicial complaint asserts that the magistrate judge has shown favoritism to the government by ignoring the inmate's motions "without giving . . . fair consideration of their content." And, the judicial complaint alleges, the magistrate judge has "consciously and voluntarily acting in disregard of [the judge's] duties . . . by granting [the government's] motion [for] extension of time."

These allegations 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 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 18, 2018



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