

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-18-90098

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

This is a judicial complaint filed by a pro se civil litigant against the United States district judge who dismissed the litigant's civil suit for lack of subject-matter jurisdiction. The district judge explained in the dismissal order that the litigant was a "non-CM/ECF participant[]." As a result, when the defendants filed their motion to dismiss, they "certified that the motion and suggestions in support were sent via United States mail" to the litigant at the litigant's last known address. The district judge further explained that because the judge was "unaware that the Clerk's Office had received [the litigant's] suggestions in opposition to the motion to dismiss," the judge "ordered [the litigant] to show cause on [a date certain] why Defendants' motion to dismiss should not be granted." Thereafter, the clerk's office filed the litigant's responsive pleading. The district judge observed that while the litigant asserted that the defendants never served the litigant with the motion to dismiss, the litigant's responsive pleading indicated the litigant's receipt of notice.

The judicial complaint alleges that the district judge "has filed false court documents, sits racial, discriminative, prejudicial, biased [sic] and displays personal favoritism to defendant[s] and [their] attorney." The judicial complaint accuses the district judge of making a false statement that the litigant "never filed service on

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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.

defendant[s].”<sup>2</sup> The judicial complaint asserts that the district judge willfully, deliberately, and unlawfully permitted the defendants to file the motion to dismiss, improperly filed the order to show cause, and erroneously granted the defendants’ motion to dismiss. According to the judicial complaint, the district “judge placed personal favoritism to defendant[s] and made lies to allow [them] to get away with violations.”

The judicial complaint’s bare, speculative allegations that the district judge displayed hostility, prejudice, and bias are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C)-(D). To the extent the judicial complaint challenges the dismissal order and orders to show cause, 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).

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<sup>2</sup>The record shows that the district judge ordered the litigant to show cause why the case should not be dismissed for failure to timely serve the defendants. Thereafter, the district judge entered an order stating that while there was “no evidence in the Clerk’s office that the summons form was previously provided by the [litigant],” the litigant subsequently provided the summons form. As a result, the district judge directed the court clerk to issue the summons and deliver the summons to the U.S. Marshal for service upon the defendants.

The complaint is dismissed.

December 20<sup>th</sup>, 2018



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