

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90101

In re Complaint of John Doe¹

This is a judicial complaint by a pro se inmate against the United States district judge who dismissed the inmate's petitions for writ of habeas corpus.

In the first action, the district judge substituted a state official as the proper respondent in the case and ordered the state official to answer the inmate's allegations within 30 days. The district judge subsequently granted the state official's motion for a 30-day extension of time to answer the petition. The inmate then moved for a temporary restraining order and preliminary injunction to prevent the inmate's transfer to federal custody. Three days later, the state official filed its responsive pleading. The next day, the district judge ordered the inmate to reply to the state official's responsive pleading. The inmate replied the following day. The district judge determined that the inmate was not entitled to relief on the inmate's habeas petition—whether the district judge construed the petition as being brought under 28 U.S.C. § 2241 or 28 U.S.C. § 2254—because the petition was untimely under 28 U.S.C. § 2244(d)(1)(A). Insofar as the inmate sought relief under § 2241, the district judge determined that the inmate failed to identify a federal sentence that was improperly calculated and failed otherwise to show that the inmate was being held in federal custody in violation of the Constitution. Thereafter, the district court denied

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 inmate's motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(4).

The district judge likewise dismissed the inmate's second habeas petition brought pursuant to § 2241 because the inmate had "already sought habeas relief on the same grounds" in the first habeas petition. As a result, the district judge determined no jurisdiction existed to review the second or successive habeas petition without the Eighth Circuit's authorization. *See* 28 U.S.C. § 2244(b)(3)(A). The inmate moved for relief from judgment under Rule 60(b)(4), and the district court denied the motion.

The judicial complaint alleges that the district judge violated federal law and conducted *ex parte* communications with the state official's attorneys in denying the inmate relief on the habeas petitions. First, the judicial complaint alleges that the district judge violated the inmate's Fifth Amendment right to due process by giving the state official 30 days to respond to the first habeas petition and then granting a 30-day extension to respond to the petition. The judicial complaint contends that the district judge engaged in "ex parte communications and acted in collusion with the [state official's] attorneys" by granting the 30-day extension without allowing the inmate an opportunity to object to the motion for an extension.

Second, "[t]o further prove, beyond a reasonable doubt, that [the district judge] conducted *ex parte* communications and engaged in collusion with [the state official's] attorneys," the inmate notes that after the inmate filed the preliminary-injunction motion, the district judge "ordered [the state official] to file [a] [r]eply . . . IMMEDIATELY, which [was done] 15 days early." The inmate also claims that the district judge "ordered the clerk not to enter the [inmate's] [m]otion until [a later date], to make it appear that the [state official's] [r]esponse was filed first, even though the docket reflects that [the inmate's] motion was received three days *before*

[the state official's] [r]epley.”² The judicial complaint concludes that these circumstances “prove, beyond a reasonable doubt, . . . [the district judge's] bias and prejudice and collusion with [the state official's] attorneys.”

Third, the judicial complaint alleges that the district judge “ignored every argument” in the inmate's pleadings and “deliberately ‘mischaracterized’ th[e] [inmate's first] petition as a § 2254 petition.” Fourth, “[t]o further prove [the district judge's] complete bias and prejudice,” the judicial complaint claims that the district judge violated the inmate's First Amendment rights by denying his second habeas petition. Finally, the judicial complaint alleges that the district judge unlawfully denied his Rule 60(b)(4) motions by never requiring the state official to respond to the motions.

These allegations are directly related to the merits of the district 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 engaged in ex parte communications and colluded with the state official's attorneys and 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.

²The docket accurately reflects that the preliminary-injunction motion was filed *before* the state official's responsive pleading. Although the preliminary-injunction motion's docket number is “23” and the responsive pleading's docket number is “17,” the docket lists the pleadings in order of *filing date*, not the docket number assigned to the pleading.

The complaint is dismissed.

January 18, 2019



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