

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90004

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se litigant against the United States district judge who (1) denied preliminary injunctive relief to the litigant in a case in which he intervened, and (2) denied the litigant's motion to recuse in a related case that the litigant filed as the plaintiff. The judicial complaint alleges that the district judge "exhibited biases and expressed certain prejudices towards the [litigant]" during a hearing on the motion to intervene. Specifically, it alleges that the district judge improperly commented on the litigant's motion to proceed in forma pauperis in the related case by stating that the litigant might have to pay some filing fee. The litigant cited this statement as the basis for his recusal motion. The judicial complaint also claims that the litigant "was dumbfounded by [an alleged] prejudicial statement" that the district judge made in the order denying injunctive relief. That statement concerned the district judge's analysis of the *Dataphase*² factors.

The record shows that the district judge ultimately granted the litigant's motion to proceed in forma pauperis. The district judge denied the recusal motion, concluding that the litigant's "fear of this Court not granting his motion to proceed in forma pauperis has not materialized, and [the litigant] has come forward with no other adequate rationale to justify recusal."

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.

²*Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109 (8th Cir. 1981).

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); 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 litigant, 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.

February 17, 2019



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