

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90044

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se litigant against the United States district judge whom the litigant filed a § 1983 civil rights action against for actions the district judge took in a prior employment discrimination action.

The record shows that the district judge had entered an order giving the pro se litigant “an opportunity to amend his complaint” in the employment discrimination action. After the litigant filed an amended complaint, the district judge dismissed the litigant’s employment discrimination action for failure to state a claim upon which relief may be granted. Specifically, the district judge held that the litigant “failed to allege sufficient facts to support an action for wrongful termination on racial or religious discrimination or retaliation under title VII fo the Civil Rights Act of 1964.” After the district judge’s dismissal of the employment discrimination action, the litigant wrote a three-page typed letter, alleging that the district judge committed fraud on the court by preventing the litigant “from fairly presenting [the litigant’s] case.”

Subsequently, the pro se litigant filed the § 1983 civil action against the district judge, alleging slander, obstruction of justice, and conspiracy. The litigant sought money damages against the district judge based on rulings that the district judge made

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.

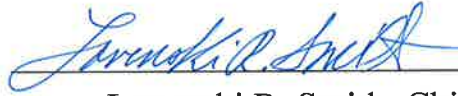
in the employment discrimination action. The district judge entered an order of recusal in the civil action, directing the clerk “to randomly reassign this case pursuant to 28 U.S.C. § 455(b)(5)(i), because I am the defendant.” The district judge attached the litigant’s letter, filed in the employment discrimination action, which the district judge noted “forms the basis for this case.”

The judicial complaint alleges that the district judge “filed a[n] intentionally misleading ORDER OF RECUSAL” because the “letter that [the district judge] . . . referr[ed] to has been alter[ed] in a small but significant way.” According to the judicial complaint, the litigant’s “letter has [a] black marking on page 2 of the letter” and the litigant’s “letters are wider th[a]n [the district judge’s] letter.” The judicial complaint maintains that the district judge altered the letter in an “attempt[] to conceal the conspiracy activity” of another district judge in a separate case. The judicial complaint further alleges that the district judge “filed a[n] intentionally misleading Order” in the employment discrimination action when it directed the litigant to file an amended complaint. The judicial complaint also accuses the district judge of “[t]ampering with physical evidence.”

To the extent the allegations challenge the district judge’s recusal order in the § 1983 civil action or the district judge’s orders in the employment discrimination action, the allegations are directly related to the merits of the judges’ decisions 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 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that district judge altered filings, concealed a conspiracy, or was intentionally misleading, such allegations are “frivolous [and] lack[] 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.

October 23th, 2019



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