

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-19-90056

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

This is a judicial complaint filed by a pro se inmate against the United States magistrate judge who recommended that the district judge dismiss the inmate's civil rights action and deny the inmate's motion to proceed in forma pauperis.

The judicial complaint alleges that the magistrate judge, along with the district judge,<sup>2</sup> "violate[d] U.S. judicial officer policy and procedure" by "not serving Defendants" before dismissing the civil rights action. The judicial complaint also alleges that the magistrate judge and district judge retaliated against the complainant by denying the motion to proceed in forma pauperis.

The record shows that the magistrate judge screened the complaint pursuant to the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g). In the magistrate judge's proposed findings and recommendations, the judge noted that the complainant "has had three complaints dismissed for failure to state a claim, and is considered a 'three-striker' within the meaning of the PLRA." The magistrate judge concluded that the complainant did not "fall[] under the 'imminent danger' exception to the three strikes rule." The magistrate judge also found the complainant's

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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.

<sup>2</sup>The complainant did not file a judicial complaint against the district judge.

allegations frivolous and not “evidenc[ing] a likelihood of an imminent serious injury.” The magistrate judge also recommended that the district judge deny the motion to proceed in forma pauperis. The district judge adopted the magistrate judge’s findings and recommendations, dismissed the action, and denied the motion to proceed in forma pauperis.

The judicial complaint’s allegations challenging the magistrate judge’s findings and recommendations to dismiss the civil rights action and deny the motion to proceed in forma pauperis are directly related to the merits of the judge’s 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 the magistrate judge made such findings and recommendations in retaliation against the complainant, 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.

November 25<sup>th</sup>, 2019



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