

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90059

JCP No. 08-19-90060

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against a United States magistrate judge and a United States district judge who have presided over the inmate's civil rights actions.

In the civil action that the magistrate judge presided over, the magistrate judge screened the civil rights complaint pursuant to the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g). In the magistrate judge's recommended disposition, the judge noted that the complainant had three prior dismissals that "constitute 'strikes' against [the complainant] for purpose of determining eligibility for [in forma pauperis] IFP status." The magistrate judge determined that because the complainant failed to plead facts indicating "imminent danger of serious bodily injury," he was not eligible for in forma pauperis status. Further, the complainant never paid the statutory filing fee as previously ordered. Therefore, the magistrate judge recommended dismissal of the complainant's claims.

In a separate civil action, the district judge screened the complainant's civil rights complaint pursuant to the PLRA. The district judge determined that the complainant had "filed at least three actions that were dismissed for failing to state

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.

a claim upon which relief may be granted”; therefore, to “proceed IFP,” the complainant had to show that the complainant fell “under the ‘imminent danger’ exception to the three strikes rule.” The district judge concluded that the complainant failed to “allege[] facts that establish imminent danger.” Accordingly, the district judge denied the complainant’s request to proceed IFP and dismissed the case for failure to pay the filing fee.

The judicial complaint alleges that the magistrate judge failed to “review or analyz[e]” the allegations set forth in the civil rights action and erroneously relied on the three-strikes rule. It further alleges that the magistrate judge “is trying to retaliate” against the complainant “for previous judicial misconduct complaints filed against” the magistrate judge. According to the judicial complaint, the magistrate judge “is extorting [the complainant] to pay the full [filing fee] . . . out of retaliation to purposely cause a[n] imbalance of judgment and to cause theft to [the complainant’s] constitutional [rights].”

The judicial complaint merely names the district judge without setting forth any allegations of misconduct. For purposes of this order, I will assume the complainant raises the same allegations against the district judge as those against the magistrate judge.

Most of the complainant’s contentions directly relate to the magistrate judge’s and district judge’s decisions regarding dismissal of the complainant’s civil rights actions. *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). “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling” J.C.U.S. 4(b)(1).

To the extent the judicial complaint alleges that the magistrate judge and district judge made their decisions 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 25th, 2019



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