

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-20-90040

JCP No. 08-20-90041

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

This is a judicial complaint<sup>2</sup> filed by an inmate (“complainant”) against the two United States district judges<sup>3</sup> who presided over the complainant’s pro se civil rights litigation under 42 U.S.C. § 1983.

I have reviewed the record. *See* J.C.U.S. Rule 11(b). The record shows that, in the first complained-of action,<sup>4</sup> the complainant filed, among other things, a motion for recusal against the first district judge. The complainant argued that “the court is biased against [the complainant] because his motions were dismissed and another case he has filed was dismissed.” The district judge denied the motion, noting that the

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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 filed numerous supplements to the original judicial complaint; we will refer to the supplements and original complaint collectively as “judicial complaint.”

<sup>3</sup>The complainant also names state court judges and attorneys in the judicial complaint, but these individuals are not “covered judge[s]” under the Judicial Conduct and Disability Act. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States Rule (J.C.U.S.) Rule 1(b).

<sup>4</sup>The complainant has filed several actions in federal district court. This complaint concerns only three of them.

complainant did “not explain why the court’s impartiality could be reasonably questioned” and did “not show any evidence of bias or prejudice.” The district judge explained that the complainant’s “motions were not denied because of bias but because [the complainant] sought relief that he was not entitled to and did not follow the rules of procedure”; additionally, the district judge denied some motions “because they were unintelligible.” In the same order, the district judge dismissed some of the complainant’s claims for failure to state a claim but permitted others to proceed. The district judge ordered the U.S. Marshal to serve on certain defendants a copy of certain portions of the complainant’s complaint. Five months after entry of that order, the district judge entered an order of recusal.

The first-filed lawsuit was reassigned to the second district judge. The defendants moved for summary judgment “before affording [the complainant] the opportunity to conduct discovery.” The district judge held the defendants’ motion in abeyance but “apprised” the parties “as to the court’s thinking on the motion as the record currently st[ood].” In the order, the district judge indicated that, based on the current record, the district judge would grant summary judgment on all claims but one. As to the complainant’s excessive-force claim, the district judge determined that “no material question of fact” existed—based on the current record—that the complainant did not sustain an injury as a result of the defendants’ use of force. The district judge ordered discovery and held the case in abeyance until the completion of discovery. Following discovery, the district judge granted the defendants’ motion for summary judgment and denied the complainant’s motions for summary judgment. After the district judge entered judgment in the defendants’ favor, the complainant moved for leave to proceed in forma pauperis on appeal. The district judge denied the motion because, during the pendency of the case, the complainant “acquired [a] third ‘strike’” under 28 U.S.C. § 1915(g) and was therefore barred from proceeding in forma pauperis on appeal. The district judge ordered the complainant to pay the appellate filing fee. This court subsequently ordered the appeal dismissed for failure to prosecute. *See* Eighth Circuit Rule 3C.

The complainant filed the second complained-of action during the pendency of the first complained-of action. The second district judge also presided over this action. The district judge denied the complainant's motion to proceed in forma pauperis because "[t]hree of [the complainant's] previous complaints were dismissed as frivolous, malicious, or failing to state a claim"; therefore, the complainant was barred from filing the federal civil case. *See* 28 U.S.C. § 1915(g). The district judge ordered the complainant to "pay the full filing fee of \$400.00 to the clerk of court within thirty (30) days of this order." The district judge "further ordered that the case would be dismissed without prejudice if [the complainant] failed to comply." The complainant, however, did not pay the filing fee and instead moved the court to reconsider its prior order denying the complainant in forma pauperis status. The district judge ordered the dismissal of the complainant's complaint without prejudice.

The complainant filed the third complained-of action in state court after the dismissal of the first and second complained-of actions. The defendants removed the action to federal district court and moved to dismiss it. In response, the complainant sent a letter to the clerk of court complaining that an attorney was "trying to connect this case" to the first complained-of action and an "old state civil case." The complainant wrote, "Unless if this District Court wants to be part of this conspiracy claim; so be it; I will address it up to the 8th Circuit Court of Appeals then, do we want to do this?" The complainant also moved to remand the case back to state court. The complainant subsequently wrote another letter to the clerk of court, asserting that the complainant never received a requested case docketing summary. The complainant requested "a total case summary to this case before I file my judicial misconduct complaint to the 8th Circuit." The complainant also requested case summaries for the first and second complained-of actions. The complainant subsequently wrote a follow-up letter to the clerk of court to notify the court of the complainant's filing of a judicial complaint against the first and second district judges. The second district judge denied the complainant's motion for remand and granted the defendants' motion to dismiss. Specifically, the district judge dismissed with prejudice the complainant's § 1983 claims "because they are barred by the

statute of limitations and res judicata” and dismissed with prejudice the complainant’s criminal conspiracy claims for lack of standing.

The judicial complaint generally alleges that the district judges were biased against the complainant in their treatment of the aforementioned actions. As to the first complained-of action, the complainant alleges that the district judges “destroy[ed]” the complainant’s claim. As against the first district judge, the complainant alleges that the “biggest misconduct of them all” was the district judge’s order that only certain portions of the complaint be served on the defendants. As to the second district judge, the complainant challenges that district judge’s conclusion that there was “[n]o proof of [the complainant] ever being injured.” According to the complainant, the “medical documents and records . . . show[] otherwise.” The complainant also alleges that the second district judge erroneously granted the defendants’ motion for summary judgment without considering all of the evidence and erroneously denied the complainant’s motion for leave to proceed in forma pauperis on appeal. The complainant challenges the district judge’s “grant[] of everything that the [d]efendants filed.”

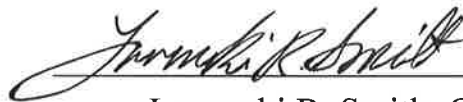
With regard to the second complained-of action, the complainant alleges that the second district judge committed a due process violation by requiring the complainant “to file and pay all filing fees of \$400.00” and ultimately dismissing the complaint.

Finally, the complainant alleges that the second district judge showed bias against him by denying his remand motion and granting the defendants’ dismissal motion. According to the complainant, the district judge’s “action was taken yet again to protect th[e] State actors for all that they did, to either tie it up forever in [d]istrict [c]ourt, or somehow [d]ismiss it.”

The judicial complaint is devoid of any evidence to substantiate the complainant's claim that the district judges were biased against the complainant or conspired to deprive the complainant of the complainant's rights. Therefore, the allegations must be dismissed as "frivolous [and] 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). Moreover, to the extent the judicial complaint challenges the district judges' orders, the allegations must be dismissed because they are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B).

The judicial complaint is dismissed.

8/3/2021, 2021



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