

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-21-90024

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge who dismissed without prejudice the complainant’s civil rights action filed under 42 U.S.C. § 1983 (“first action”) and is currently presiding over another § 1983 action filed by the complainant (“second action”).

The complainant alleges that the district judge’s denial of his motions for appointment of counsel “effectively denied [the complainant] access to the court to litigate and prosecute the defendants and caused the dismissal as a failure to prosecute for lack of identifying the unknown defendants.” The complainant also challenges the district court’s order directing the complainant “to refrain from repeatedly filing motions.”

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). In the first action, the district judge denied the complainant’s motion for appointment of counsel, explaining that “[t]he court cannot routinely appoint counsel in civil cases” and that “[i]ndigent civil litigants do not have a constitutional or statutory right to appointed counsel.” (Alteration in original.) After considering the relevant factors, the district judge “denied without prejudice” the complainant’s “requests for

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.

appointment of counsel.” Thereafter, the complainant again moved for appointment of counsel. The district judge denied the motion “for the reasons previously stated.” Then, for a third time, the complainant again moved for appointment of counsel, which the district judge again denied. The district judge ultimately dismissed the first action “without prejudice because [the complainant] failed to prosecute it diligently and failed to comply with [the district judge’s] orders.”

The complainant then filed the second action, moved for appointment of counsel, and moved for a new judge. The district judge denied the motion for appointment of counsel for the same reasons given in the first action. The district judge also denied the motion for a new judge; the complainant had “request[ed] a new judge because [the complainant] object[ed] to [the district judge’s] rulings in other of [the complainant’s] cases, but the district judge explained that “unfavorable rulings in previous litigation” are not indicative of bias necessitating recusal. Thereafter, the complainant filed a motion for injunction, “asserting that the . . . district judge denied [the complainant] access to the courts and acted pursuant to a ‘Black Code’ when [the district judge] dismissed one of [the complainant’s] prior cases without prejudice for failing to prosecute and follow court orders . . . and when [the district judge] denied [the complainant’s] motions to appoint counsel, do discovery, and obtain video footage that would identify each defendant in that prior case.” (Footnotes omitted). The complainant “request[ed] a restraining order removing [the district judge] . . . in th[e] case” due to “bias[] . . . based on [the district judge’s] decisions in [the] prior case.” The district judge denied the motion; in doing so, the district judge addressed each one of the complainant’s contentions and “advised [the complainant] to refrain from repeatedly filing motions that have already been ruled upon.” In a subsequent order, the district judge “direct[ed] the Clerk of Court to provide [a copy of the complaint from the first action] to [the complainant] on a *one-time basis*.” The district judge “cautioned” the complainant that the “amended complaint . . . should not be . . . an exact word-for-word replica of [the complainant’s] [c]omplaint in [the first action] because the [district judge] ha[d] decided that [c]omplaint was deficient in various respects.”

The complainant's allegations directly challenge the district judge's various opinions and orders; therefore, the judicial complaint must be dismissed as "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.

8/20, 2021



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