

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90031

In re Complaint of John Doe¹

This is a judicial complaint filed by a civil litigant (“complainant”) against the United States district judge assigned to the complainant’s civil-rights action.

The judicial complaint alleges that the district judge has shown bias in favor of the defendants by permitting them to violate local rules and engaging in ex parte communications with the defendants. The judicial complaint cites certain orders in support of the allegations. The complainant cited these same orders in a motion to recuse the district judge.

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 recusal motion, the complainant

broadly [argued] that recusal is warranted because the [district judge]: (1) has shown bias or partiality by ruling in Defendants’ favor or ignoring alleged rule violations by them; (2) has engaged in an ex parte communication to alert Defendants that the Court would be granting a motion for extension of pages on their summary judgment brief, thereby emboldening Defendants to file an overlength brief for judgment on the pleadings; and (3) has had a judicial complaint filed against him by [the complainant].

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.

The district judge denied the recusal motion. First, the district judge determined that “the undersigned has not shown any bias in its rulings or perceived failures to rule.” The district judge denied “chastis[ing]” the complainant in a ruling denying the complainant’s “request for an overly lengthy discovery extension.” Instead, the district judge had “simply ruled that [the complainant] was only entitled to a two-month discovery extension, not the nine-month extension [the complainant] sought.” The district judge also pointed out that “several rulings have gone against Defendants.”

Second, the district judge explained that “neither the undersigned nor [the] staff had any ex parte communications with Defendants, Defendants’ counsel, or any of their staff regarding the Court’s order granting Defendants’ motion for an extension of pages for summary judgment.” Furthermore, the district judge explained, “to the extent Defendants’ counsel alleges that [counsel] called the undersigned’s staff to alert them to problems with ECF or with questions regarding how to serve [the complainant] documents, . . . these administrative communications did not concern the substance of this matter, had no bearing whatsoever on any of the Court’s rulings, and in no way impacted the undersigned’s impartiality or judgment in this case.”

Third, the district judge stated that “the filing of a judicial complaint against [a judge] does not make [the judge] biased or partial against [the complainant].”

Having reviewed the record, I conclude that, to the extent the judicial complaint’s allegations challenge the district judge’s orders, they 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* 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); J.C.U.S. Rule 3(h)(3)(A) (“Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An

allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). To the extent that the judicial complaint alleges that the district judge is biased in favor of the defendants and engaged in ex parte communications with defense counsel, 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).

Accordingly, the judicial complaint is dismissed.

July 20, 2022

Lavenski R. Smith

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