

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-21-90036

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

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

The complainant challenges the district judge’s grant of a defendant’s motion to dismiss. In opposition to the defendant’s motion, the complainant alleges that he had “pointed out the Discovery of Injury Rule” to the court. The complainant also alleges that the district judge demonstrated an “inability to apply [a] provision of the Telecommunication Act.” According to the complainant, in footnote 5 of the order, the district judge, “labeled [the complainant] a ‘Flat-Rate’—as noted—[the complainant] is a incarcerated [c]itizen within [the state]—does draw [h]ostile [a]ttention towards [the complainant] within a [p]rison [s]etting.”

Having reviewed the record,<sup>2</sup> including all complained-of orders and actions by the district judge, I conclude that to the extent that the judicial complaint’s allegations challenge the district judge’s dismissal order, 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* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the

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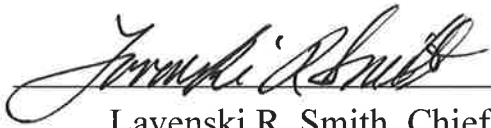
<sup>1</sup>Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

<sup>2</sup>*See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b).

judicial complaint alleges that the district judge treated the complainant in a hostile manner, the allegation is “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.

5/9/22, 2022



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