

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90034

In re Complaint of John Doe¹

ORDER

This is a judicial complaint filed against a district judge to whom a case removed from state court was assigned. Consistent with allegations of procedural misconduct in prior complaints against the district judge, another district judge, and the chief judge of this circuit, the Complainant alleges that the district judge issued a standing order prior to removal that “facilitated” assignment of the removed case to the district judge “in violation of the purported ‘randomly assigning of judges’ to cases.” The complaint alleges that this constituted judicial misconduct bias, favoritism, class animus discrimination, impropriety, mail fraud, and “honest services fraud.” Because of the prior complaints, the chief judge referred this complaint to me, as the next most senior circuit judge, for review and appropriate action.

In support of this allegation, the Complainant attached a Standing Order issued by the district judge at the outset of the COVID-19 pandemic setting forth detailed procedures the court would follow “in response to the spread of the COVID-19 virus . . . for all civil and criminal cases on my docket to facilitate case management.” The Order contains no provisions governing how new cases filed in the district court would be assigned to a district judge, randomly or otherwise, and thus provides no

¹Under Rule 4(f)(1) of the Eighth Circuit’s Rules Governing Complaints of Judicial Misconduct and Disability, the names of the complainant and the judge complained against are to remain confidential, except in special circumstances not here present.

support for the allegations of predetermined assignment or manipulation of future case assignments. The conclusory allegations of bias, favoritism, discrimination, and fraud are unsupported. Thus, these allegations are dismissed as “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C § 352(b)(1)(A)(iii); Rules 11(c)(1)C), (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States; Rule 4(c)(3) of the Eighth Circuit’s Rules Governing Complaints of Judicial Misconduct and Disability.

The complaint further alleges that the district judge knew or should have known that the removing parties failed to comply with statutory removal requirements, yet improperly allowed the removals and the filing of motions to dismiss. These allegations are dismissed because they clearly relate to the merits of one or more decisions or procedural rulings. See 28 U.S.C. § 352(b)(1)(A)(ii). I further note that the case giving rise to these allegations was closed in June 2020. The judicial complaint procedure does not authorize the Judicial Council to investigate or reopen a judicial proceeding. See Rule 1(e) of the Eighth Circuit’s Rules Governing Complaints of Judicial Misconduct and Disability. And if it did, these allegations would provide no valid basis to investigate or reopen.

The complaint alleges that the district court in dismissing a prior case “used email to communicate in secret ex parte with ‘all attorney[s]’ in [that case] involving the same attorneys” who filed electronic removal and motions to dismiss in this case. The only support is a copy of the civil docket sheet in the prior case with the clerk’s notation of how attorneys will be contacted. There is no allegation the Complainant was denied fair notice by this practice. The allegation is dismissed as frivolous.

To the extent the complaint alleges misconduct of other officials, the judicial complaint procedure is limited to United States judges; it does not apply to other officials who work for or appear in the federal courts. See Rule 4 of the Rules for Judicial-Conduct and Judicial Disability Proceedings of the Judicial Conference of

the United States; Rule 1(c) of the Eighth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability.

The complaint is dismissed in its entirety.

September 16, 2022

James B. Loken, Circuit Judge
United States Court of Appeals
for the Eighth Circuit