

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90064

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In re Complaint of John Doe¹

These are judicial complaints filed by an inmate (“complainant”) against two United States district judges. The judicial complaints allege that the district judges violated the complainant’s “right[] to proceed leave of in forma pauperis [IFP],” resulting in a due process violation. The judicial complaints also allege that the district judges acted with “neglect and strat[e]g[i]c indifference” by “us[ing] [IFP] as an escape goat to each claim that [the complainant] ha[s] brought.”

In a supplement to the judicial complaints, the complainant further alleges that the complainant “requested . . . leave to proceed [IFP] to be waived on all 28 claims” and that one of the district judges named in the complaint “waived them all.” Now, the complainant maintains, that district judge “wants [the complainant] to pay for [the] court fees [the district judge] originally waived.” The complainant asserts that the district judge’s action evidences a “disability.” Further, the complainant alleges, the second district judge “is challenging [the complainant’s] IFP with [the first district judge’s] assistance to . . . strike [the complainant’s] 28 cases filed that [the first district judge] originally waived.”

Attached to the judicial complaints are five orders issued by the first district judge denying the complainant’s request to waive all filing fees in five dismissed

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.

actions. Also attached is an order from the second district judge directing the complainant to pay the filing fee or submit a request to proceed IFP.

I have reviewed the attachments and record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). They show that the first district judge granted the complainant's motion for leave to proceed IFP in the first action, ordering the complainant to pay an initial partial filing fee within 30 days. Thereafter, the complainant's "institution must collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2) . . . and forward those payments to the court." Subsequently, the district court denied the complainant's motion to waive IFP but granted in part and denied in part the complainant's motion to waive filing fees and costs for copies. The court ordered the matter "to proceed to initial review without full payment of the initial partial filing fee" but required the complainant "to pay the initial partial filing fee as funds exist." Ultimately, the district judge dismissed without prejudice the first action for failure to state a claim and for being frivolous litigation. Thereafter, the complainant moved to waive all filing fees in the dismissed action. The district judge denied the motion, explaining that "[t]he method for collecting the filing fee from a prisoner is specifically provided for in 28 U.S.C. § 1915(b)" and that § 1915(b) "is written in mandatory terms ('the prisoner shall be required to pay'), leaving no discretion to the district court to waive an [IFP] prisoner's filing fee." The district judge followed the same course of action in the remaining four actions—granting the complainant's motion for leave to proceed IFP, dismissing the action, and denying the motion to waive fees.

In the action before the second district judge, that judge ordered the complainant to pay the filing fee or submit an IFP request. The complainant then moved for leave to proceed IFP. The district judge thereafter issued an order "to show cause why [five] cases [filed by the complainant that were previously dismissed] should not be considered strikes against [the complainant] per the terms of the PLRA [Prison Litigation Reform Act], and why [the complainant] is entitled to proceed

[IFP] pursuant to 28 U.S.C. § 1915(g).” Alternatively, the district judge stated that the complainant “may pay the \$402.00 filing and administrative fees within 30 days.” If the complainant failed to take either action, the district judge would dismiss the matter. In a subsequent order, the district judge denied the complainant’s motion for leave to proceed IFP and dismissed the case without prejudice. In that order, the district judge “identified three or more federal cases brought by [the complainant], while a prisoner, that were dismissed as frivolous or for failure to state a claim.” Further, the court rejected the complainant’s argument that the complainant “faces an imminent danger of serious physical injury” to fall within the imminent-danger exception of § 1915(g).

Having reviewed the record, I conclude that to the extent that the judicial complaints challenge the district judges’ aforementioned rulings, the allegations 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 judicial complaints allege that the district judges suffer from a disability, have colluded to deprive the complainant of the complainant’s rights, have shown neglect or indifference, or have otherwise engaged in misconduct, the allegations are “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 complaints are dismissed.

October 21, 2022



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