

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90078

JCP No. 08-22-90080

In re Complaint of John Doe¹

These are two judicial complaints brought by pro se civil litigants (“complainants”) against the United States district judge assigned to their case.

The judicial complaints allege that the district judge had “improper motives in delaying decisions—approving a timely, reasonable disability accommodation hearing request[;] [the first complainant’s] pending motion for leave to proceed in forma pauperis [IFP] and appointment of counsel[;] repeatedly harassing [the second complainant] to hold him accountable for paying the [the first complainant’s] legal fees[;] [and] violating the [the second complainant’s] financial privacy rights.” The judicial complaints further allege that the district judge “intentionally discriminate[d] against [the first complainant] by delaying a hearing decision and finally denying it” and by “shift[ing] blame for denial of [the first complainant’s] [IFP] status to [the second complainant] by claiming he failed to fill out [c]ourt [o]rdered financial disclosure forms [and] ordering [the second complainant] to pay for [the first complainant’s] legal fees.” Further, the judicial complaints claim that the district judge retaliated against the second complainant “for voicing objections of [the district judge’s] treatment of [the first complainant]” and has “never rule[d] to appoint a next friend [for the first 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.

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). The record shows that the civil complaint was filed in March 2021. At that time, the first complainant filed a motion for leave to proceed IFP and a motion to appoint counsel. In April 2021, a purported amended complaint was filed. In March 2022, the district judge entered a memorandum and order denying without prejudice the first complainant's motion to proceed IFP and motion to appoint counsel. The district judge explained that the second complainant had initiated the proceeding by filing these motions in the first complainant's name "in care of" the second complainant. The second complainant signed the first complainant's name to the complaint filed in March 2021 and filed an "unsigned supplemental complaint"² in April 2021. The district judge ordered the second complainant to file a motion for appointment as next friend and a copy of guardianship documents for the first complainant. The district judge denied the motion for appointment of counsel at that time because the second complainant needed to file a motion to proceed as next friend on the first complainant's behalf and because the complaints were not sufficient to state a claim upon which relief can be granted.

The district judge also denied the motion to proceed IFP at that time because the district judge was unable to determine "if the motion was filed by [the second complainant] with the legal authority to do so on [the first complainant's] behalf." The district judge also noted that the motion failed to "list a trust fund or provide any financial information concerning it," yet the "supplemental complaint state[d] that money was taken from '[the first complainant's] trust fund.'" The district judge required the first complainant or legal guardian to pay the filing fee or file a new motion to proceed IFP. The district judge listed the information that the new motion must contain. In addition, the district judge required the second complainant "to file an IFP Motion on his own behalf, because courts ordinarily consider the income and

²The district judge explained that although the filing was titled "first amended complaint," it was actually a "supplement" to the March 2021 complaint.

assets of the applicant and his or her close family members to be relevant to the determination of the applicant's indigence.”

Finally, the district judge required the first complainant or legal guardian “to file an amended complaint on a Court-provided form.” The district judge explained that if the second complainant filed the amended complaint on the first complainant's behalf, a new motion for appointment of counsel must also be filed with the amended complaint. The district judge advised that failure to comply with these directions would result in dismissal of the action.

In April 2022, a second amended complaint was filed, along with a motion to appoint counsel, motion to proceed as next friend, and IFP motions for the first complainant and second complainant. In June 2022, the district judge ordered that the second complainant show cause why the district judge should not deny the first complainant's IFP motion as a result of the second complainant's failure to submit a completed application to proceed IFP on the second complainant's own behalf. Specifically, the district judge found that the second complainant failed to “complete the appropriate form” that was provided to the second complainant. “Instead, [the second complainant] filed a self-prepared ‘Application to Proceed in District Court Without Prepaying Fees or Costs Serving as Next Friend.’” The district judge “determined that [the second complainant] failed to comply with the [prior] [o]rder because he did not disclose his income, savings, cash, or other assets as required by the form.” The district judge ordered the second complainant to either show cause why the district judge should not deny the first complainant's IFP motion because of the second complainant's failure to submit a complete application or pay the filing fee.

In July 2022, the second complainant paid the filing fee and responded to the district judge's June 2022 order. In August 2022, the second complainant argued that his financial information was irrelevant to the first complainant's IFP motion and requested a hearing. The district judge determined that the second complainant

“rendered the issue moot when he paid the filing fee in this case.” As a result, the district judge denied as moot the second complainant’s motion for a hearing and the first complainant’s and second complainant’s IFP motions. The district judge denied the first complainant’s motion to appoint counsel because the second complainant paid the filing fee. Finally, the district judge held in abeyance the second complainant’s motion to proceed as next friend and ordered the second complainant to file a supplement to his motion “set[ting] forth his position as to whether he can act independently as a guardian for [the first complainant] in this case.” The district judge required the second complainant to “attach supporting documentation to his supplement, which may include: (1) an affidavit or declaration by [a co-guardian] stating that [the second complainant] may act independently in this case, or (2) a court order establishing that [the second complainant] may act independently in this case.” In the absence of either, the district judge explained that the second complainant would need to “withdraw his motion and/or file a joint motion with [the co-guardian].” The district judge advised that failure to comply with these directions would result in the denial of the motion.

The second complainant responded by asking for an extension of time to supplement the motion to proceed as next friend and by “attempt[ing] to raise several additional motions, including a motion to reconsider the denial of [the first complainant’s] motion to proceed [IFP], a motion for appointment of counsel, a motion for a ‘disability accommodation hearing,’ a motion for a copy of the ‘case document file,’ a motion for the [c]ourt to report its conduct to the ‘JUDICIAL CONDUCT & OVERSIGHT GROUP,’ and a motion for recusal.” The second complainant alleged that the district judge “engaged in an ‘entrapment scheme’ to trick either [the first or second complainant] into paying the filing fee,” “ignor[ed] ‘Medicaid law’ and a ‘St. Louis County 2001 Court marital separation order,’” and “ignored a ruling in a case filed in the [federal district] in 2006.” In September 2022, the district judge granted the motion for extension of time. But the district judge denied all other motions. Contrary to the second complainant’s allegations, the district judge explained that “the [c]ourt did not address the 2001 marital separation

order, or other prior rulings, because the [c]ourt did not take up [the first complainant's] motion for leave to proceed [IFP] on the merits. The [c]ourt did not take up the motion on the merits because [the second complainant] chose to pay the filing fee on [the first complainant's] behalf instead of disclosing his financial information." The district judge also denied the complainant's other requests for recusal, reporting of conduct, and a copy of the case file, concluding that the second complainant "provide[d] no legal authority or factual bases for these requests."

Thereafter, the complainants filed several motions, including a motion to recuse. Several of these filings "stemm[ed] from [the second complainant's] belief that the [c]ourt set a 'trap' for him and [the first complainant]." The district judge addressed the outstanding motions in October 2022, after the judicial complaints were filed. First, the district judge addressed the motion for appointment of next friend, which the judge had previously held in abeyance in order for the second complainant to obtain an affidavit from the co-guardian. Because the co-guardian provided the affidavit, the district judge "permit[ted] [the second complainant] to act as next friend . . . on behalf of [the first complainant]." The district judge denied as moot all other motions pertaining to the second complainant's appointment as next friend. As to the recusal motion alleging "prejudicial discriminatory animus" the first complainant, the district judge determined that "[i]n light of th[e] [judicial] complaint," the district judge would "hold [the first complainant's] recusal motion in abeyance pending consideration by the Chief Judge of the Eighth Circuit." Relatedly, the district judge denied as moot the motions relating to the submission of a judicial complaint. Finally, the district judge denied the second complainant's motion for a refund of the filing fee. The district judge explained that it "gave [the second complainant] three options in its June 21, 2022 Order. Of the three options, [the second complainant] elected to pay the \$402.00 filing fee."

Having reviewed the record, I conclude that to the extent that the judicial complaints challenge the district judge's orders, 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 that the judicial complaints allege delay in rendering decisions, “[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” J.C.U.S. Rule 4(b)(2). Here, the complainants have alleged improper motive, but the record does not support the allegations. As a result, the allegations must be dismissed. Finally, to the extent the judicial complaints allege that the district judge showed discriminated or retaliated against the complainants or engaged in other unlawful 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)(D).

The judicial complaints are dismissed.

November 7, 2022



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