

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90096
JCP No. 08-22-90097
JCP No. 08-22-90098
JCP No. 08-22-90099
JCP No. 08-22-90100
JCP No. 08-22-90101

In re Complaint of John Doe¹

These are judicial complaints filed by an inmate (“complainant”) against three United States circuit judges, two United States district judges, and a United States magistrate judge.

The judicial complaint alleges that the complainant was “ordered by the court . . . to pay [\$]505.00 filing fee” but the judges “violated [the complainant’s] rights to have [his] complaint heard.” The complainant alleges “over four years in delays.”

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 complainant filed a pro se § 1983 complaint in one district, but the first district judge transferred the complainant’s § 1983 complaint to another district. In that district, the second district judge found that the complainant had accumulated more than three strikes. *See* 28 U.S.C. § 1915(e)(2)(B). That district judge denied the complainant’s in forma pauperis (IFP) motion, dismissed the case

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.

with prejudice, denied the complainant's motion for appointment of counsel as moot, and certified that an appeal would not be taken in good faith. The complainant appealed and filed a motion to proceed IFP on appeal. The magistrate judge denied the complainant's IFP motion.

The complainant then filed two renewed IFP motions in the Eighth Circuit. The Clerk of Court for the Eighth Circuit issued a standard order advising the complainant that because "[t]he district court ha[d] determined that [the complainant] has three 'strikes' under 28 U.S.C. § 1915(g)," the complainant "may not proceed in this appeal without first paying the full appellate docketing fee." The order directed the complainant to pay the "appellate docketing fee of \$505, or . . . file a pleading in this court explaining why [the complainant] is eligible to proceed without pre-payment of the fee." The order warned the complainant that the appeal would be dismissed for failure to prosecute if the complainant failed to do as directed. Following the complainant's response, the three circuit judges dismissed the complainant's appeal "for failure to pay the filing fee or establish eligibility to proceed [IFP] under 28 U.S.C. § 1915(g)." The three circuit judges denied the complainant's "motions for leave to proceed [IFP]." The three circuit judges assessed "[t]he full \$505 appellate docketing fees . . . against the [complainant]" and "remand[ed] the collection of those fees to the district court." The complainant petition for rehearing by the three circuit judges, who denied the petition.

Following the denial of panel rehearing, the complainant advised the three circuit judges that the fee was paid. The three circuit judges then recalled the mandate, vacated the judgment, and reopened the appeal. After considering the district court record, the three circuit judges summarily affirmed the district court's dismissal under 28 U.S.C. § 1915(e)(2)(B).

Having reviewed the record, I conclude that to the extent that the judicial complaint's allegations challenge the judges' various 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* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges “delay in rendering a decision or ruling,” the allegation must be dismissed because the allegation does not concern “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).

Accordingly, the judicial complaint is dismissed.

June 27, 2023



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