

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-22-90120

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

CORRECTED\* ORDER

This is a judicial complaint brought by a civil litigant against the chief judge of this Circuit based upon an order issued by the chief judge dismissing two prior judicial complaints against a district court judge presiding over the complainant's civil lawsuit. As the complaint alleges judicial misconduct and disability by the chief judge, it was referred to me, as the next most senior circuit judge, for review and appropriate action.

The chief judge's prior order, dated November 7, 2022, dismissed two judicial conduct complaints alleging delay, improper motives, and intentional discrimination by the district judge in a series of procedural rulings in the underlying civil action. After discussing the complainants' allegations and the district judge's various rulings at length, the chief judge ruled:

Having reviewed the record, I conclude that to the extent that the judicial complaints challenged the district judge's orders, the allegations must be dismissed as "directly related to the merits of a decision or procedural ruling." To the extent that the judicial complaints allege delay in rendering decisions, "[c]ognizable misconduct does not include

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<sup>1</sup>Under 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.

\* Corrected order issued to amend the caption previously listed as "In re Complaint of John Doe" in Judge Loken's January 13, 2023 order.

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.” 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 the district judge . . . 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.”

(Citations to pertinent provisions of 28 U.S.C. § 352(b)(1)(A) and the J.C.U.S. Rules omitted.)


In this complaint, the Complainant first alleges that the chief judge “demonstrates mental disorientation” by incorrectly stating in the prior order that “2 complainants exist.” This allegation is demonstrably false. The Court’s official Judicial Conduct (JCP) records show that two separate judicial complaints were filed, one by the Complainant’s spouse on behalf of Complainant and another by the Complainant’s spouse; that the Clerk of Court promptly sent Complainant’s spouse a letter acknowledging receipt of the second complaint; and that Complainant’s spouse did not ask to be removed from the complaint until after the chief judge ruled. Thus, it is patently frivolous to assert that the chief judge’s prior order reflects judicial misconduct or disability. See 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 Eight Circuit’s Rules Governing Complaints of Judicial Misconduct and Disability.

The Complainant further alleges that the chief judge’s prior JCP order “disregard[ed] core complaint facts” in order to dismiss complaints of “discriminatory treatment” by a “fellow colleague.” Like the prior two complaints dismissed by the chief judge, these allegations of improper motive, bias, or discrimination against the complainant or in favor of the complained-against district judge are “lacking sufficient evidence to raise an inference that misconduct has occurred.” To the extent

the Complainant is seeking to relitigate the complaints made against the district judge in the prior two complaints, those complaints have been dismissed; therefore, these allegations are dismissed because they clearly relate to the merits of a prior decision or procedural ruling. See Rule 1(f) of the Eighth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability.

The complaint is dismissed in its entirety.

February 16, 2023

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