

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90002; 08-23-90003; 08-23-90004

In re Complaint of John Doe¹

ORDER

These are three repetitive judicial complaints brought by a pro se civil litigant against the district court judge assigned to the complainant's civil lawsuit. The complainant, recently deceased, is represented by the complainant's spouse. In JCP No. 08-22-90080, the chief judge of this Circuit dismissed a prior complaint against the district judge on November 7, 2022. The complainant then filed a judicial complaint alleging judicial misconduct and disability by the chief judge reflected in that Order. This complaint was referred to me, as the next most senior circuit judge, for review and appropriate action. I dismissed the complaint on January 13, 2023.

The new complaints state they are "interrelated to all complaints being filed against" the district judge. They allege the judge has engaged in "egregious," "willful, intentional," and "animus-filled" discrimination on the basis of the complainant's disability in continuing to preside over the underlying action, entering an order in December 2022 denying the complainant's motion to recuse and providing that the action will be dismissed on January 18, 2023, unless counsel enters an appearance for the complainant. For a remedy, the first new complaint states that the complainant:

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.

issues this new complaint . . . with the purpose of seeking Judicial Council to overrule [the district judge's] 11-7-22 ruling [the date of the chief judge's Order], immediately stop [the district judge] from taking any case dismissal action or further involvement in this case -- until the Judicial Council rules on prior complaints and new complaints being filed, and preferably simply order the recusal of [the district judge] from [the complainant's] pending case at this time.

These complaints must be dismissed because they seek relief that cannot be provided by the judicial misconduct and complaint procedure that Congress has authorized. First, there are no pending complaints to which these complaints can be "interrelated" as part of a "primary, core complaint." The complainant's prior complaint against the district judge was dismissed; it is not pending. The next complaint, against the chief circuit judge, was not "related" to a "core complaint" against the district judge. It was a separate complaint of judicial disability and misconduct by the chief circuit judge. It, too, has been dismissed.


Second, the Judicial Council of the Eighth Circuit is an administrative body, not a court. It has no authority to overturn, amend, or stay actions taken by a district judge in a pending civil action based upon a judicial misconduct complaint. Congress conferred jurisdiction on district judges to preside over civil actions. See 28 U.S.C. Chapter 85. The Supreme Court of the United States has frequently stated that, when jurisdiction is conferred, a district judge has an "unflagging obligation" to exercise that jurisdiction. Congress also conferred jurisdiction over appeals of final orders and certain interlocutory decisions of the complained-against district judge on the United States Court of Appeals for the Eighth Circuit, not the Eighth Circuit Judicial Council. See 28 U.S.C. Chapter 83. By asking the Judicial Council to "stop [the district judge] from taking any case dismissal action," the complainant seeks relief Congress has not authorized the Judicial Council to provide. Rule 1(e) of the the Eighth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability expressly states:

The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case. Neither the chief judge of the Court of Appeals nor the judicial council of the circuit has the power to change a decision or ruling. Only a court can do that.

Third, the Judicial Council is also barred from providing the other remedy these complaints seek -- recusal of the district court judge. The statute provides that a complaint "directly related to the merits of a decision or procedural ruling" must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii). "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States. Therefore, the judicial complaint procedure "may not be used to have a judge disqualified from sitting on a particular case." Rule 1(e) of the Eighth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability.

For these reasons, the complaint must be dismissed in its entirety. Though I understand the complainant spouse's frustration with the delay and expense of litigation, the judicial disability and misconduct complaint procedure is not an alternative to the judicial process that Congress has provided, including appeals to the Eighth Circuit Court of Appeals. As the chief judge explained in his lengthy November 7, 2022 Order, the complainant's initial complaint was dismissed because it contained only unsupported conclusory allegations of judicial misconduct by the district judge, and allegations that clearly related to the merits of the judge's ruling. The complainant cannot obtain a contrary decision by filing new "interrelated" complaints of judicial disability and misconduct by the district judge.

January 23, 2023


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