

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90018
JCP No. 08-23-90019
JCP No. 08-23-90020
JCP No. 08-23-90021
JCP No. 08-23-90022

In re Complaint of John Doe¹

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

The judicial complaint alleges that the judges’ treatment of the complainant’s ineffective-assistance-of-counsel claim resulted in a miscarriage of justice.

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 magistrate judge held a hearing on the complainant’s motion to determine defense counsel’s competency and determined that counsel was competent to represent the defendant. Subsequently, a jury convicted the complainant. The complainant then filed a 28 U.S.C. § 2255 motion, which the now-retired district judge denied. The Eighth Circuit denied a certificate of appealability. The complainant later filed numerous unsuccessful motions for authorization to file a successive § 2255 motion. In the most recent motion for authorization, the

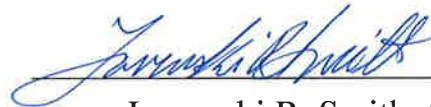
¹Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

complainant claimed, among other things, that defense counsel was ineffective based on the complainant's prior competency motion and the complainant's claim that counsel admitted that the complainant was guilty during closing arguments. The circuit judges denied the complainant's motion for authorization to file a successive habeas application.

The now-retired district judge is not a "covered judge" subject to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–365. *See* J.C.U.S. Rule 1(b). Furthermore, having reviewed the record, to the extent the judicial complaints' allegations challenge the orders of the circuit judges and the magistrate judge, 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 complaints allege that the judges engaged in other judicial misconduct, such allegations are "frivolous, 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).

The judicial complaint is dismissed.

July 7, 2023



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