

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90024
JCP No. 08-23-90025
JCP No. 08-23-90026
JCP No. 08-23-90027
JCP No. 08-23-90028
JCP No. 08-23-90029
JCP No. 08-23-90030
JCP No. 08-23-90031
JCP No. 08-23-90032
JCP No. 08-23-90033
JCP No. 08-23-90034
JCP No. 08-23-90035

In re Complaint of John Doe¹

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

The judicial complaints allege that (1) the district judge and circuit judges conspired with the prosecutor, other judges, and court employees² to violate the complainant’s due process and equal protection rights and deny the 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.

²The prosecutor and court employees are not “covered judges” subject to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–365. *See* J.C.U.S. Rule 1(b); *see also* J.C.U.S. Rule 8(c) (“Complaints against noncovered persons are not to be accepted for processing under these Rules but may, of course, be accepted under other circuit rules or procedures for grievances.”).

access to the courts; (2) the district judge ignored the complainant's right to effective assistance of counsel; (3) the district judge had an ex parte meeting with the prosecutor prior to the complainant's sentencing hearing; (4) the district judge denied the complainant a copy of the record in violation of the complainant's Sixth Amendment rights; (5) the district judge failed to consider a reply brief filed by the complainant; (6) the circuit judges violated their own rules by not appointing counsel to the complainant; and (7) the circuit judges violated the complainant's due process rights by not ruling on issues that the complainant raised on appeal.

I have reviewed the record in the complainant's criminal case and in the motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. *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 pleaded guilty to the charged offense. Prior to sentencing, the complainant filed a pro se motion to withdraw the guilty plea. The district judge denied the motion for failure to state a proper legal basis and because the complainant was represented by counsel. The complainant then expressed a desire to terminate counsel and proceed pro se. The district judge advised the complainant that although the district judge could not prevent the complainant from terminating defense counsel, the district judge was not going to hear argument on the complainant's motions, as they were already denied. The complainant responded, "I don't get no due process of law?" The district judge replied, "You're getting all the due process you're entitled to and apparently all that you can handle. So here's the deal: If you want to fire [counsel], I'll let you fire [counsel]. Your motions have already been denied. I'm going to work through the due process as I believe the United States Constitution guarantees you, and if I am wrong, the 8th Circuit will gladly tell me." The complainant ultimately decided against terminating counsel. Following the sentencing hearing, the complainant appealed, arguing, among other things, that defense counsel was ineffective. The Eighth Circuit declined to consider this argument on direct appeal.

Following the direct appeal, the complainant filed a pro se motion requesting that the district judge send the complainant copies of “a full docket sheet” in the criminal case and “a copy of everything that was filed by [the complainant], attorneys or the United States in the case.” The district judge granted the complainant’s request to receive a copy of the docket sheet but denied without prejudice the complainant’s request for “a copy of everything else that was filed.” In response to the complainant’s statement that the requested discovery was needed to litigate a pending § 2255 motion, the district judge replied, “All such motions or requests must be filed in the pending Section 2255 case.”

The complainant did file a pro se § 2255 motion, claiming 43 grounds for relief. The complainant filed motions for discovery, including the production of various documents and records. The district judge concluded that the complainant failed to show good cause for the motions and denied them without prejudice. The district judge also denied the complainant’s motion to disqualify the district judge because the complainant failed to state a “legitimate basis for disqualification.” The complainant subsequently moved for leave to supplement the § 2255 motion and for production of various documents. In a text order, the district judge denied the motions. The complainant then filed renewed motions for leave to supplement and for disqualification of the district judge. The district judge denied the motions. The district court also denied the complainant’s request that the district judge ensure that the complainant “is provided with paper, pens, and access to a ‘legal computer.’” The district judge stated, “A review of the record shows that [the complainant] has enjoyed exceptional access to the Court, therefore, this motion is denied.”

The complainant then filed with the Eighth Circuit a pleading entitled, “Supplemental Brief of Writ of Mandamus.” The pleading sought to “supplement[] [the complainant’s] original petition for [the district judge] to recuse.” Three of the circuit judges denied the complainant’s petition for writ of mandamus.

Thereafter, the district judge denied the complainant's § 2255 motion, rejecting the complainant's ineffective-assistance-of-counsel claims and prosecutorial-misconduct claims on the merits and summarily denying relief on the remaining claims as waived under the plea agreement. The complainant sought a certificate of appealability (COA) following the district judge's denial of the § 2255 motion and also sought authorization to file a successive § 2255 motion.

Three of the circuit judges denied the complainant's application for a COA, noting that they had "carefully reviewed the original file of the district court." In the same judgment, the circuit judges also denied the complainant's motions for a briefing schedule and for remand. In a separate judgement, the circuit judges denied the complainant's motion for authorization to file a successive habeas application in the district court.

Recently, the complainant requested a copy of the docket reports in the § 2255 proceeding and in the criminal case. The district judge ordered the Clerk of Court to send the complainant a copy of the docket reports. The district judge also ordered the Clerk of Court to send the complainant certain requested documents upon receipt of the copying fee. And the district judge construed the complainant's "Petition to Vacate Sentence and Conviction Pursuant to Federal Court Rule-60(B)" as "a second § 2255 motion." The district judge "denie[d] the motion without prejudice to [the complainant] obtaining authorization from the Court of Appeals for [the district judge] to consider [the] claims." In the same order, the district judge denied the complainant's "related requests" and the complainant's request that the district judge recuse. The district judge determined that the complainant failed to state a "legitimate basis for disqualification."

Having reviewed the record, to the extent the judicial complaints' allegations challenge the orders of the district judge and the circuit judges, 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 conspired against the complainant, violated the complainant's rights, engaged in improper communications, or 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 complaints are dismissed.

July 7, 2023



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