

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90042

In re Complaint of John Doe¹

This is a judicial complaint filed by a civil litigant (“complainant”) against the United States district judge who dismissed the complainant’s civil rights action after granting summary judgment in favor of the defendant.

The judicial complaint alleges that the district judge conspired with the complainant’s former counsel by using the former counsel’s “words” instead of the complainant’s words in granting summary judgment to the defendant dismissing the complainant’s civil rights action.

I have reviewed the record in the complainant’s civil rights action. *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, proceeding *pro se*, filed the civil rights action. Subsequently, the complainant retained counsel, who filed a first amended complaint and a second amended complaint. The defendant moved for summary judgment. Before complainant’s counsel responded to the summary-judgment motion, the complainant relieved counsel of counsel’s duties. The complainant’s counsel then moved to withdraw as counsel. Another district judge originally assigned to the case granted the motion, noting that the complainant “must now proceed *pro se* in this matter” and file a response to the defendant’s summary-

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.

judgment motion. The complainant filed a response but failed to “specifically controvert” the defendant’s statement of uncontroverted material facts in the response. Thereafter, the case was reassigned to the complained-of district judge, who granted the defendant’s summary-judgment motion on the complainant’s second amended complaint. The district judge noted that the defendant’s statements of fact were “deemed admitted for purposes of summary judgment” because of the complainant’s failure to controvert them. The district judge then entered judgment in accordance with its summary-judgment order dismissing the complainant’s claims with prejudice.

To the extent the judicial complaint challenges the district judge’s summary-judgment order and judgment, it 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* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge conspired with the complainant’s former counsel to dismiss the complainant’s civil rights action, such allegation is “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 17, 2023



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