

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90067

In re Complaint of John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge assigned to the complainant’s petition for writ of habeas corpus. *See* 28 U.S.C. § 2241.

The judicial complaint alleges that the district judge “is not allowing the court clerk to file the [complainant’s] constitutional challenge and motion to intervene” in violation of the complainant’s due process and equal protection rights. According to the complainant, the district judge is preventing the filing to prevent the Attorney General of the United States from learning that the complainant has “newly discovered evidence.” The complainant alleges that the “delay is intentional proving cognitive misconduct.”

I have reviewed the record in the complainant’s criminal case. *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 filed a petition for habeas corpus in October 2022. Soon thereafter, the magistrate judge recommended that the district judge dismiss the petition for lack of jurisdiction and denying a certificate of appealability. In November 2022, the complainant objected to the magistrate judge’s report and recommendation (R&R). The complainant then

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.

filed the following: (1) “Motion to Court Clerk” requesting that the district judge “certify to the Attorney General . . . that a statute has been questioned” (April 2023); (2) “Notice of Constitutional Challenge to Statute and Motion to Intervene” providing that the district judge was “not upholding the [l]aw under the Constitution and . . . [s]tatutes” (April 2023); (3) “Supplemental Filing for Notice of Constitutional Challenge to a Statute and Motion to Intervene” (June 2023); and “Motion for Declaratory Judgment and Motion for Summary Judgment” (June 2023). All four documents and the magistrate judge’s R&R are pending on the docket.

To the extent the judicial complaint alleges that the district judge has “delay[ed] in rendering a decision or ruling,” such allegation does not constitute “[c]ognizable misconduct.” J.C.U.S. Rule 4(b)(2). This allegation of delay “is excluded as merits-related.” J.C.U.S. Commentary on Rule 4; *accord* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the district judge had an improper motive to delay ruling on the complainant’s motions, *see* J.C.U.S. Rule 4(b)(2), 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 18, 2023

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