

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-23-90070

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In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by a civil litigant (“complainant”) against the United States magistrate judge assigned to the complainant’s civil case.

The judicial complaint alleges that the magistrate judge “refused to rule” on the complainant’s motion to appoint counsel” “as part of [the complainant’s] disability accommodations.” It further alleges that the magistrate judge committed “a hate crime” in denying the complainant’s motion to file documents through the electronic case filing (ECF) system because (1) the magistrate judge stated that the complainant’s motion was denied when it was actually granted in part and denied in part, and (2) knew that the complainant had a reading disability yet “slipped” into the last sentence of the order that the complainant could contact the clerk to receive electronic notification of filings. The judicial complaint further states that a “second hate crime” occurred in the same denial order when the magistrate judge “chose not to permit additional mail time to [the complainant]” despite knowing that the complainant is disabled. Finally, the judicial complaint contends that the magistrate judge favored the defendants by allowing them to respond to a filing five days late without any consequences.

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<sup>1</sup>Under 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.

I have reviewed the record in the civil 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 motion to appoint counsel, which is still pending on the docket. The complainant also filed a “Motion to File Documents with Pacer,” requesting “the ability to upload documents to pacer for this case” because the complainant “live[s] in a small county town . . . that does not have access to businesses that have late office hours for printing and mailing after the [complainant] get[s] off work.” The magistrate judge denied the motion. In the order, the magistrate judge explained that the local rules required that documents submitted by pro se parties be in paper form and stated that if a pro se party desired to file documents electronically through the ECF system, the party could request permission via a motion. Having considered the complainant’s motion, the magistrate judge found “insufficient reason to authorize the filing of documents electronically.” The magistrate judge did note that the complainant could “contact the Clerk of Court’s Office . . . to provide the necessary information to receive electronic notification of case filings in th[e] case.”

Thereafter, the complainant filed a motion for leave to file an amended complaint, which is still pending on the docket. The defendants filed a joint resistance to the motion one day after the deadline. One of the defendants thereafter filed a “Belated Motion Requesting Extension of Time,” explaining that because the defendants “elected to file a joint resistance to [the complainant’s] motion for leave to file amended complaint to avoid unnecessary paperwork,” it took “an additional day.” The motion further explained that such delay caused the joint resistance to be filed a day late. The motion requested that “the [c]ourt grant a belated request for extension of time dating back to [the complainant’s] Motion for Leave to Amend Complaint.” The magistrate judge entered a text order granting the belated motion.

Having reviewed the record, to the extent the judicial complaint alleges that the magistrate judge has “delay[ed] in rendering a decision or ruling” on the motion to appoint counsel, 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 magistrate judge had an improper motive to delay ruling on the complainant’s motion to appoint counsel, *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).

To the extent the judicial complaint challenges the magistrate’s orders on the complainant’s “Motion to File Documents with Pacer” and the defendant’s “Belated Motion Requesting Extension of Time,” 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* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the magistrate judge discriminated against the complainant in entering the orders, 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.

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*July 17*, 2023



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