

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90073

JCP No. 08-23-90074

In re Complaint of Jane Doe/John Doe¹

These are judicial complaints filed by a civil litigant and the civil litigant's relative (collectively, "complainants") against the United States district judge who dismissed with prejudice the civil litigant's civil rights action.

The first judicial complaint alleges that the district judge (1) failed to hold "a hearing or rule[]" on the merits of the [civil litigant's] exhibits, the constitutional violation claims[,] or the facts of the law"; (2) failed to "rule on [the civil litigant's] motion to compel the [defendants] to answer interrogatories or request for admissions" and instead "voided [the civil litigant's] request for admissions [and] stayed all of [the] discovery"; (3) "intentionally addressed" the civil litigant with improper pronouns despite knowing the civil litigant's gender from the civil litigant's driver's license and birth certificate; (4) failed to offer reasons for denying the civil litigant's motions; (5) became a "material witness" to the evidentiary dispute between the civil litigant and the defendants when the defendants provided the district judge with e-mails showing comments the civil litigant made about seeking the district judge's recusal; (6) held the civil litigant in contempt instead of the defendants; (7) dismissed the civil litigant's case "without ever reviewing one shred of evidence" because the district judge was prejudiced against the civil litigant. The first judicial

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

complaint summarily concludes that the district “was partial, discriminatory, refused to hear the case, refused to grant any of [the civil litigant’s] motions even when [the civil litigant] had evidence, proof of the constitutional violations, proof of the contradictions in the officers reports and statements, [and] proof of the courts and judges abusing their power.” It asserts that the district judge’s actions discriminated against the civil litigant on the basis of “sexual orientation, race, gender[,] and disability.”

In the second judicial complaint, the civil litigant’s relative alleges that the district judge favored the defendants; failed to protect the civil litigant’s interest, “intentionally discriminate[d]” against the civil litigant based on sex, race, disability, and sexual orientation; and failed to render constitutional decisions.

I have reviewed the record in the complainant’s 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 September 2021, the civil litigant filed the civil action and moved for leave to proceed in forma pauperis. In October 2021, the district judge entered an order granting the motion for leave to proceed in forma pauperis. In the order, the district judge used the pronouns “he” and “his” for the civil litigant. The same day, the civil litigant submitted a notice to the district judge, advising the judge “to not use any form of male pro-nouns to identify” the civil litigant. The civil litigant provided the district judge with a copy of her driver’s license and birth certificate. The same day, the district judge entered an order reconsidering the prior order and corrected the pronouns. The district judge also stayed the case until the civil litigant’s criminal case concluded and directed her to provide a status report by April 2022. Shortly thereafter, the civil litigant moved to lift the stay. In November 2021, the district judge entered an order denying the motion to lift the stay because the civil litigant’s criminal case remained pending. The district judge again advised the civil litigant to provide a status report by April 2022. But the civil litigant filed a motion for leave to amend the complaint. The district judge denied the motion and stated that the case remained stayed. The civil litigant

again moved to lift the stay. And, once again, the district judge denied the motion and directed the civil litigant to provide a status report by April 2022. In December 2021, the civil litigant filed a status report.

In January 2022, the civil litigant filed a motion to submit physical evidence as an exhibit. The district judge entered an order denying the motion because the court was not able to assume responsibility for the physical evidence. In February 2022, the civil litigant moved to reopen the case and lift the stay and requested to amend the complaint. In June 2022, the district judge granted the request to lift the stay, reopened the case, and denied without prejudice the request to amend. In August 2022, the civil litigant filed three motions for leave to amend the complaint, a motion to have her name removed “from the internet” and to be substituted with “Jane Doe,” and a motion for discovery. In September 2022, the civil litigant filed a motion for sanctions. Subsequently, the district judge entered an order denying all of the motions. With regard to the motion for discovery, the district judge explained that “[d]iscovery requests, such as interrogatories and requests for documents, should not be filed with the court but instead sent to defense counsel.” Shortly thereafter, the civil litigant again moved for leave to amend the complaint. Once again, the district judge denied the motion. The civil litigant moved for reconsideration of that order, but the district judge denied it in a text order. In October 2022, the civil litigant filed a motion for reconsideration of the denial of the motion to amend, motion to add official capacity claims, motion to strike the defendants’ affirmative defenses, and motion for order directing the defendants to clarify their answers. The district judge denied these motions. As to the motion to add official capacity claims, the district judge commented that the civil litigant had “thoughtfully and thoroughly presented her official capacity claims”; nevertheless, the district judge “st[oo]d by [the] previous rulings dismissing them.” In November 2022, the civil litigant filed a motion for discovery, motion to compel, motion to appeal in forma pauperis, and motion to amend her appeal. In December 2022, the civil litigant filed another motion for discovery. A few days later, the district judge denied the first motion for discovery and motion to compel, advising that requests for discovery “should not be filed on the

docket,” the civil litigant’s “pleadings appear to be initial requests rather than a response to defendants’ failure to participate in discovery,” the civil litigant’s “pleadings lack any indication she made a good faith effort to work with opposing counsel to obtain the documents before seeking judicial assistance,” the defendants had failed to promptly respond to the discovery motions, and the parties must review the scheduling order. The district judge denied the motion to appeal in forma pauperis because the civil litigant was “not appealing from a final appealable order” and denied as moot the motion to amend the appeal. The district judge entered a separate order denying the additional motion for discovery, reminding the civil litigant that “discovery requests should not be filed on the docket.”

In February 2023, the district judge set a status conference after the defendants filed an emergency motion for hearing to address the civil litigant’s allegedly improper harassment of the defendants and counsel and a motion to limit discovery and the civil litigant filed a motion for order on discovery. After the district judge notified the parties of the status conference, the district judge received “approximately 75 emails, containing approximately 55 audio files and various documents” from the civil litigant. The district judge construed these filings as “objections to an in-person status conference.” The district judge granted the civil litigant’s objection to an in-person status conference and scheduled it via Microsoft Teams. At the status conference, the district judge directed defense counsel to be prepared to address the civil litigant’s “allegations that counsel has failed to properly respond to discovery” and the civil litigant to be prepared to address “defense counsel’s allegations that [the civil litigant] has engaged in improper harassment of defendants and counsel.” The district judge ordered the civil litigant “to have no communication with the defendants, defense counsel, or [the district judge’s] office” prior to the status conference. A day after the status conference was held, the district judge entered an order granting in part the defendants’ motion to limit discovery, denying as moot the defendant’s emergency motion for hearing, and denying as moot the civil litigant’s motion for order. The district judge’s order voided all of the previous discovery requests, set future discovery with firm deadlines, and set limits

on both interrogatories and requests for admission. In the order, the district judge also directed the parties and defense counsel “to have no telephonic, electronic or in-person communications” with one another, except for “properly noticed depositions.” The district judge ordered the parties to mail their discovery requests and responses via United States Postal Service.

In March 2023, the civil litigant filed a motion for order and motion to compel. The district judge denied the motions because “she [sought] answers to outstanding discovery that was voided by the order issued [in February 2023].” In April 2023, the civil litigant filed a motion to file additional interrogatories and motion to compel. Because the defendants did not object, the district judge permitted the civil litigant to file five additional interrogatories. The district judge denied as moot the motion to compel because the defendants asserted that they had provided the requested document to the civil litigant.

In April 2023, the defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 41(b) and in the alternative for contempt and motion to broaden the court’s February 2023 order based on the civil litigant’s alleged violation of the no-contact provision of the February 2023 order. In support of the motion, the defendants “provided over 200 pages of exhibits demonstrating [the civil litigant’s] willful violation of the communication restrictions and their own efforts to redirect her.” The civil litigant responded that “when she received and viewed the video of her arrest, the weight of reliving the experience overwhelmed her again.” In May 2023, the district judge granted the motion to dismiss and dismissed with prejudice the civil litigant’s complaint “for failure to comply with a court order” pursuant to Rule 41(b). The district judge determined that the civil litigant’s failure to follow the prior no-contact order was not justified. The district judge explained that its February 2023 order was “a plain directive” for “neither party . . . to contact the other telephonically, electronically, or in person. Full stop. [The civil litigant] violated this directive.” In addition to dismissing the lawsuit, the district judge denied all other pending motions as moot.

Despite the dismissal, the civil litigant continued to file motions. First, the civil litigant moved to void, alter, amend, or vacate the judgment. The district judge denied the motion in a text order. Second, the civil litigant moved to recuse or disqualify the district judge or, in the alternative, moved to vacate certain court orders. In a text order, the district judge denied the motion. Third, the civil litigant moved for additional peremptory challenge to remove the district judge and moved to vacate a the dismissal order due to fraud upon the court. The district judge denied these motions in text orders. Most recently, the civil litigant filed a sealed motion and documents, and the district judge entered a sealed order.

Having thoroughly reviewed the record, to the extent the judicial complaints challenge the district judge's orders, 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 district judge discriminated against the civil litigant, was biased against the civil litigant, or engaged in other judicial misconduct, the record reflects that 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 18, 2023



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