

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-23-90078

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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 district judge who dismissed the complainant’s case with prejudice.

The judicial complaint alleges that the district judge was biased against the complainant and favored the defendants “throughout the proceeding, thereby affording the [d]efendants the advantage of delaying and withholding [d]iscovery.” The judicial complaint further alleges that the district judge “deliberately den[ie]d [the complainant] the right to have a fair trial . . . by ignoring for long periods of time the [m]otions [that the complainant] filed, then unfairly denying them.” The judicial complaint identifies several filings in the record to support the allegations.

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 the complainant filed a pro se employment discrimination action pursuant to Title VII, 42 U.S.C. § 2000e. The complainant moved for leave to amend the complaint, and the defendants opposed the motion. The day after the defendants’ filed their response, the district judge entered an order denying the motion because the “proposed amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) and therefore would be futile.”

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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.

Three days before the discovery deadline, the defendants were to depose the complainant; “however, due to concerns over exposure to the corona virus, the [complainant] asked that the deposition be rescheduled.” The defendants’ counsel “agreed to cancel the deposition if the [complainant] would agree to a continuation of the discovery and motions deadline, and the [complainant] agreed.” On the date of the discovery deadline, the defendants then moved for an extension of time, asking the district judge to extend the discovery and motions deadline by at least 45 days to allow time to reschedule the complainant’s deposition. Attached to the motion was an exhibit showing the e-mails between the complainant and defendants’ counsel in which the complainant agreed to extend the deadlines. The next day, the district judge entered a text order granting the motion for extension of time.

During this same time, the complainant filed a motion to refile the amended complaint. Over a month later, the district judge entered a text order granting the motion. Six days after the district judge granted the motion, the complainant moved to compel the production of documents by a non-party. Then, one day before the amended discovery deadline, the defendants filed a second motion for extension of time. The motion stated, “Due to persisting concerns over covid-19, the parties have not rescheduled the [complainant’s] deposition, but, at this time, the parties are anticipating they will be able to take depositions sometime in [the following month].” The motion represented that the complainant did not object to the extension of discovery deadline and requested an extension of at least 45 days. The next day, the district judge entered a text order granting the second extension motion. The district judge then entered an amended scheduling reflecting the extension. Two days before the amended discovery deadline, the complainant sat for a telephonic deposition.

Less than a month later, the defendants moved for summary judgment. Fifteen days after the defendants filed the summary-judgment motion, the district judge entered a text order finding the complainant’s motion to compel the production of documents moot after “[t]he parties . . . advised the [c]ourt that the discovery has been produced.” Subsequently, the complainant filed a response to the summary-judgment

motion. The defendants then filed a reply to the complainant's response. The complainant responded to that reply. The complainant also filed a motion to join a defendant. Over two months after the defendants filed the summary-judgment motion, the district judge entered an order granting the motion. In that order, the district judge "denied as futile" the complainant's motion for leave to join a defendant "for the reasons stated in the order." The district judge further noted that the motion was untimely.

Having reviewed the record, to the extent the judicial complaint alleges that the district judge "delay[ed] in rendering a decision or ruling" on the complainant's motions, 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).

To the extent the judicial complaint challenges the district judge's orders, 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 district judge was biased 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.

July 17, 2023



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