

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90087

In re Complaint of Jane Doe/John Doe¹

This is a judicial complaint filed by an inmate (“complainant”) against the United States district judge who dismissed without prejudice the complainant’s pro se petition for writ of habeas corpus.

The judicial complaint alleges that the district judge “abused [the judge’s] discretion . . . by not even considering [the complainant’s] [m]otion to grant” the petition for writ of habeas corpus. According to the complainant, the district judge denied the complainant due process by not allowing the complainant the “opportunity to present [the] case and evidence.”

I have reviewed the record in the complainant’s 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 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The district judge reviewed the petition “pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.” In an opinion an order, the district judge denied in part the complainant’s petition, denied as moot the complainant’s “two motions to grant 2241” and two “motions to expedite motion of 28 USC 2241,” denied the complainant’s “motion to address AUSA for compassionate release,” and ordered the

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.

complainant within 30 days to “file an amended pleading styled as a civil-rights complaint raising [the complainant’s] remaining claims.” In ordering the amended pleading, the district judge explained that the complainant’s “claims regarding sexual and mental abuse, the BOP’s failure to properly treat [the complainant’s] cancer and dental conditions, the mold and other physical conditions at the prison, and allegations of cruel and unusual punishment in [the complainant’s] housing placement involve the conditions of [the complainant’s] confinement,” which “are not properly the subject of a petition for a writ of habeas corpus under 28 U.S.C. § 2241.” The district judge warned that if the complainant failed to “file an amended pleading in the time permitted, this matter will be dismissed without prejudice.”

After the district judge entered its opinion and order, the complainant filed a “Motion for Abuse of Discretion of Power” concerning the complainant’s “arguments on appeal” and a motion seeking “appointment of counsel and ‘an extension to file the 28 USC 1915(b) for a civil law suit.’” The district judge denied both motions. Then, after the complainant failed to file an amended complaint within the 30-day period, the district judge dismissed the action without prejudice and denied as moot the complainant’s application to proceed in forma pauperis.

Having reviewed the record, I conclude that the judicial complaint challenges the district judge’s orders and therefore 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 engaged in other judicial misconduct, 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.

August 4, 2023

A handwritten signature in blue ink, appearing to read "Lavenski R. Smith", written over a horizontal line.

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