

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP Nos. 08-23-90037 through 08-23-90039  
JCP Nos. 08-23-90043 through 08-23-90045  
JCP Nos. 08-23-90046 through 08-23-90059  
JCP No. 08-23-90083

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

Before me are judicial complaints against every circuit judge for the United States Court of Appeals for the Eighth Circuit one United States district judge.

The first set of judicial complaints is against the three circuit judges who entered a judgment (1) dismissing as untimely the complainant's appeal of two of the district court's orders, (2) summarily affirmed the complainant's appeal of another order of the district court, and (3) denied the complainant's motions for appeal on *Brady* violations and for application for the original writ. The complainant alleges that these circuit judges "violated court rules and . . . aided and abetted . . . a criminal." The complainant faults these judges for accepting "a criminal[']s testimony who confessed to its criminal activities."

The second set of judicial complaints is against the same three circuit judges after the complainant's petition for en banc rehearing and panel rehearing were denied. The complainant alleges that these circuit judges are "to[o] blind to see [the complainant's] . . . RIGHT to turn a government witness in" and "repeatedly" violated the complainant's civil rights.

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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.

The third set of judicial complaints is against every Eighth Circuit judge “on grounds of aiding and abetting” certain crimes. And the final judicial complaint is against a district judge for “conspiracy in partnership with [an entity] under fraud and false statements.”

Adherence to the historic maxim that “no man can be a judge in his own case,” *In re Murchison*, 349 U.S. 133, 136 (1955), here would leave no one in the Eighth Circuit to rule on these judicial complaints. If the usual rules of recusal were to apply, the practical effect of the complainant’s decision to name all members of the Judicial Council as subject judges is to deprive the complainant of any review whatsoever, because the Judicial Council includes every member of the Eighth Circuit Court of Appeals, as well as a member from each judicial district. *See In re Complaint of John Doe*, 2 F.3d 308, 310 (8th Cir. Jud. Council 1993) (Arnold, R.S., J.); Commentary to Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 25.

The J.C.U.S. provides narrow exceptions to its recusal rules. Where, as here, all regular active circuit judges are named as respondents in a judicial complaint, the Judicial Council “may determine whether to request a transfer [to another circuit] under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.” J.C.U.S. Rule 25(f). The Commentary to Rule 25 recognizes “multiple-judge complaints are virtually always meritless” and recommends “transfer only if the judicial council determines that the petition for review is substantial enough to warrant such action.” Commentary to *id.* Rule 25 is “a rule of necessity . . . consistent with the appearance of justice,” because “[t]here is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.” *Id.*

Pursuant to J.C.U.S. Rule 25, I submitted to the Judicial Council the question whether these judicial complaints should be transferred to another circuit or resolved

on the merits by the undersigned. In August 2023, a majority of the Judicial Council voted to permit me to rule on the merits of the complaint.<sup>2</sup> I now do so.

Having reviewed the judicial complaints, to the extent the judicial complaints challenge the judges' decisions, 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 judicial misconduct on the part of the judges, I find that the complainant's allegations are "frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); *see* J.C.U.S. Rules 11(c)(1) and (D).

The judicial complaints are dismissed.

August 23, 2023



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

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<sup>2</sup>To obtain a quorum, members of the Judicial Council who are judges subject to the complaint may vote on whether to transfer or refer the judicial complaint. *See* J.C.U.S. Rule 25(f).