

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90098

In re Complaint of John Doe¹

ORDER

This is a second or supplemental judicial complaint brought by an anonymous complainant against the chief judge of this circuit, who ruled on the merits of the complainant's initial complaint. This complaint was referred to me, "the most-senior active circuit judge not disqualified," for review and appropriate action. See Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States ("J.C.U.S. Rules"); Rule 18(f) of the Eighth Circuit Rules Governing Complaints of Judicial Misconduct and Disability ("Eighth Circuit Rules"). For the following reasons, I dismiss the complaint in its entirety.

Both the initial complaint and this complaint were submitted anonymously. Rule 2(g) of the Eighth Circuit Rules provides:

Anonymous complaints are not handled under these rules. However, the clerk will forward any anonymous complaint to the chief judge of the court of appeals for such action as the chief judge considers appropriate.

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

The Commentary to Rule 4 of the J.C.U.S. Rules notes that “[a] person who seeks to report information of misconduct or disability on a confidential or anonymous basis may proceed through various alternative avenues within the judiciary.” Consistent with these rules, the Clerk of the circuit court referred the initial complaint to the chief judge, who directed the complaint to proceed. It was assigned JCP No. 08-22-90026 and forwarded to the chief judge in early August 2022.

The initial complaint alleged that a United States district judge “has violated several of the Canons for U.S. judges” in sentencing a criminal defendant. The chief judge reviewed the record and each allegation of misconduct individually. The chief judge concluded that “no cognizable misconduct has occurred” because “no judicial canon was violated” and, to the extent the district judge’s rulings were challenged, the allegations must be dismissed as “directly related to the merits of a decision or procedural rulings. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S Rule 4(b)(1), 11(c)(1)(B).” On November 14, 2022, the chief judge issued his four-page order dismissing JCP No. 08-22-90026. The circuit clerk sent this order to the complainant but with a typo in the email address the complainant had provided. The complainant filed a timely petition for review to the Eighth Circuit Judicial Council in late December, which was unanimously rejected by the Judicial Council Review Panel. See Eighth Circuit Rules 5-8. The circuit clerk provided the complainant with the Review Panel order along with the chief judge’s original order concluding JCP No. 08-22-90026.

The complainant submitted more materials in January, February, and late June, 2023, which the circuit clerk docketed and acknowledged receipt. In late August, the complainant emailed the circuit clerk stating “my complaint has not been answered properly” and the Judicial Council has not responded to “my response to the order wrongfully filed by the chief judge.” The email concluded, “[y]ou can take this as another complaint on you personally as well as the chief judge.” The circuit clerk forwarded these materials to the chief judge, who directed that no action be taken.

On September 3, the complainant emailed the circuit clerk, "I am submitting another complaint." The clerk referred this to the chief judge, who directed that a new complaint not be opened. The complainant sent another email objecting to this decision.

The chief judge then directed the circuit clerk to consider all the complainant's emails as a complaint against him and refer this new complaint to me. Later in September, the complainant sent additional emails. One, labeled "an amended complaint on" the circuit clerk and the chief judge, stated that the complainant filed "two, acknowledged, complaints," the circuit clerk has "two judicial Canon violations complaints that need to be properly addressed," and the complainant has "the absolute 1st Amendment right to redress . . . ANY public official I cho[o]se and use the speech I would like." Another email threatened to add a Clerk's Office employee "to the complaint."

1. The complainant's first complaint is concluded. The complainant asserts that the circuit clerk has not provided "proof that the [chief judge and Review Panel] orders in question were actually delivered to the correct address." As noted, the complainant's timely appeal of the chief judge's order to the Review Panel confirms receipt of that order, and the complainant's subsequent emails to the circuit clerk acknowledged receipt of both orders. To posit that a corrected mistake in the complainant's email address means that JCP No. 08-22-90026 was never dismissed is fantasy -- in the operative judicial complaint process (JCP) terms, "frivolous" and "lacking sufficient evidence to raise an inference that misconduct has occurred." J.C.U.S. Rules 11(c)(1)(C), (D).

2. The second complaint must be dismissed for numerous reasons. First, it has no JCP legitimacy. Both complaints were filed anonymously, which means the JCP rules do not apply. Eighth Circuit Rule 2(g) leaves the response to anonymous complaints to "such action as the chief judge considers appropriate." Though both

complaints were improper in form, see Eighth Circuit Rule 2(a), the chief judge elected to treat the first complaint as a JCP; he and the circuit clerk proceeded accordingly. The chief judge chose not to open a new complaint based on emails he elected to consider a second JCP complaint. The complainant was sent notice of this decision, prompting the filing of this second complaint against the chief judge.

It was well within the discretion of the chief judge under the JCP Rules to decline to open a new anonymous complaint based primarily on the allegations in a prior anonymous complainant that was dismissed by the chief judge and upheld by the Review Panel. The complainant alleges the second complaint included additional submissions that contained “lots of new evidence.” But Rule 2(g) does not require that any anonymous complaint be considered *under the JCP Rules*. “A chief judge’s decision not to identify a complaint . . . is not appealable and is subject to Rule 4(b)(1), which excludes merits-related complaints from the definition of misconduct.” J.C.U.S. Commentary, Rule 5. Thus, allegations that the chief judge improperly declined to open a new complaint on the basis of these additional submissions must be dismissed because they are directly related to the merits of the chief judge’s decision or procedural rulings and are therefore not proper subjects of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11 (c)(1)(B); J.C.U.S. Commentary, Rule 4. To the extent the complainant alleges that the chief judge is “clearly biased,” such allegations must be dismissed as merits-related when, as in this case, the only support for the allegation of bad motive is the merits of the judge’s rulings. See J.C.U.S. Rule 3(h)(3)(A).

Second, the complainant alleges judicial misconduct by two non-judicial officers, the circuit clerk and a member of his staff. These allegations must be dismissed because the judicial complaint procedure is limited to United States judges. J.C.U.S. Rule 1(b). “Complaints about other officials working for the federal courts should be made to their supervisors in the various courts.” Eighth Circuit Rule 1(c). Indeed, “[i]f the circuit clerk receives a complaint about a person not holding an

office described in [J.C.U.S.] Rule 1(b), the clerk *must not accept the complaint under these Rules.*” J.C.U.S. 8(c) (emphasis added); see Eighth Circuit Rule 3(b). Thus, the circuit clerk acted properly by discussing the complainant’s supplemental emails with the chief judge without opening a second JCP complaint.


Third, the complainant’s assertion that he or she has “waited more than a year and a half” for allegations of Judicial Canon violations to be addressed is, as a factual matter, simply false. The chief judge did not delay in dismissing the first complaint on the merits. Even if the court sent that decision to the wrong email address, the complainant timely appealed. The circuit clerk then acknowledged an apparent email address mistake and made sure the complainant received copies of both JCP No. 08-22-90066 final orders. The chief judge took this procedural history into account in deciding to treat later emails as a second anonymous complaint, which he declined to open. “Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling,” absent improper motive. J.C.U.S. Rule 4(b)(2).

Fourth, the complaint further alleges that the chief judge did not follow “written procedure” by failing to provide the complainant with “any Memorandum, concurring or dissenting opinions” from the Review Board as provided in J.C.U.S. Rule 19(c). The complainant was sent a copy of the Review Board order, was provided a second copy when the email address issue surfaced, and was then advised by the circuit clerk that there were no “memoranda incorporated by reference in the order and separate concurring or dissenting statements.” Thus, this allegation must be dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii); J.C.U.S. Rules 11(c)(1)(C), (D).

In one of his latest emails to the Clerk’s Office, the complainant concludes: “In total this looks like a civil rights violation. I believe it would be a § 1983 action. I am ready to begin a pro se lawsuit against the 8th circuit. . . . I had every right to file a Canon violation complaint on [the chief judge and the district judge] for what I

believe are Canon violations. It can be addressed now or in the pro se lawsuit but it will be heard.” As I have explained, the complainant’s “Canon violation” allegations against the district judge were considered on the merits and dismissed by the chief judge, and the allegations against the chief judge in the second or amended complaint have been considered on the merits by me. Filing a lawsuit against the Eighth Circuit, its judges, and/or its judicial employees is of course the complainant’s prerogative. This complaint is dismissed in its entirety.

October 3, 2023


James B. Loken, Circuit Judge
United States Court of Appeals
for the Eighth Circuit