

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-24-90017

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In re Complaint of John Doe\*

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This is a judicial misconduct complaint by a civil plaintiff against a district judge who is presiding over a civil action brought by the complainant.

In the civil action, the complainant filed a 115-page *pro se* amended complaint against several defendants. The district judge screened the complaint under 28 U.S.C. § 1915(e)(2) to determine whether the action should be dismissed as frivolous or malicious, or for failure to state a claim on which relief may be granted. The court entered an order concluding that five sets of claims should proceed and that the remaining claims would be dismissed.

The complainant alleges that the judge selected specific words in the order to insult and humiliate him, and to signal to the defendants that he had a bias based on the complainant's "religion and financial status." The complainant points to the judge's statements that the amended complaint was "politely described as winding and obtuse," and that the judge had done his "level best to wade through the muck of this Amended Complaint in order to separate the wheat from the chaff." He asserts that "obtuse" is a synonym for "stupid" and "muck" for "farmyard manure," such that the judge's order conflicts with an ethical canon that a judge "should be patient, dignified, respectful, and courteous to litigants."

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\*Under Rule 24(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the names of the complainant and the subject judge are not disclosed. Citations or references herein to a "Rule" refer to these Rules.

The complainant also objects to the judge's comment that the surviving claims "may well be vulnerable to a strong motion to dismiss." The complainant asserts that the judge's remarks indicate that he intends to dismiss the case, and have led some of the defendants to send harassing e-mails and text messages to the complainant.

The complainant also says that he moved to disqualify the subject judge, and that the judge declined to recuse himself. In a supplement to the complaint, the complainant takes issue with the judge's later order denying his motion to use the electronic filing system. The judge's order stated that there is a rational basis to treat pro se parties and represented parties differently when it comes to electronic filing, because lawyers are officers of the court and members of a bar who may be presumed to use the filing system responsibly. The complainant's supplement alleges that the judge is biased because he treats pro se and represented parties differently.

Insofar as the judicial complaint challenges the judge's orders, including the recusal order and the order on electronic filing, the judicial complaint must be dismissed as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); *see* Rule 4(b)(1) (cognizable misconduct does not include "an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse"). The judge's "note of caution" to the plaintiff that the remaining claims may be vulnerable to a motion to dismiss was likewise related to the merits of the case.

Even assuming that the judge's characterization of the amended complaint as "obtuse" and filled with "muck" was other than "dignified, respectful, and courteous," the choice of wording does not rise to the level of cognizable misconduct—*i.e.*, treatment of a litigant "in a demonstrably egregious and hostile manner." Rule 4(a)(2)(B). The judge evidently gave the lengthy pleading a thorough review, ultimately allowed five sets of claims to proceed, and even offered to "look favorably on a request for the appointment of pro bono counsel in this case" if the complainant wished to have professional assistance.

The allegations of judicial bias based on “religion” and “financial status” are dismissed as merits-related because they are conclusory and unsupported by anything other than the judge’s decision on the merits. *See* Rule 4(b)(1) (if decision is alleged to be result of improper motive or improper conduct in rendering decision, complaint is not cognizable to extent that it questions the merits of the decision); *In re Complaint of John Doe*, No. 08-10-90026 (8th Cir. C.J. Aug. 19, 2010) (although allegations of judicial bias are not necessarily merits-related, such allegations must be dismissed as merits-related when supported only by adverse rulings).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton  
Chief Judge

Filed: July 8, 2024

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