

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-24-90030

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In re Complaint of John Doe\*

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This is a judicial complaint filed by a state prisoner against a district judge. The judge dismissed the complainant's *pro se* action filed under 42 U.S.C. § 1983 in 2019. The judge also directed the clerk of court not to file a different complaint in 2024 because the court had placed the prisoner on a restricted filer list as a “serial vexatious litigant.”

In 2019, the complainant filed an action under § 1983. The judge issued an order directing the complainant either to pay the filing and administrative fees for his lawsuit or to file an application to proceed in forma pauperis within the next month. After the complainant failed to comply with the order, the judge dismissed the complaint without prejudice. The complainant filed a notice of appeal, a motion for leave to appeal in forma pauperis, and a motion to amend the complaint. The judge entered an order denying the motion to amend as moot, and denying the motion for leave to appeal in forma pauperis because such an appeal would not be taken in good faith. The clerk forwarded the notice of appeal to the court of appeals.

The complainant then filed a motion to proceed in forma pauperis in the court of appeals. The court of appeals summarily affirmed the district court's judgment and denied the complainant's motion to proceed in forma pauperis as moot. The court of

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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.

appeals assessed the full appellate filing and docketing fees, and remanded the case to the district court for collection of fees.

In this judicial complaint, the complainant asserts that as a result of the district judge's order, he was "denied and disabled any ability toward relief in an actionable claim." He refers to "the ability to appeal by filing a motion with an attached affidavit that complies with each mandate" of a particular federal rule of appellate procedure. He argues that the rule of procedure "remains good law" and that the statute governing appeals taken in bad faith has "no legal force or effect."

In a supplemental filing, the complainant alleges that the same judge ordered the district court clerk not to file a different civil action that the complainant brought in May 2024. The complainant attaches a letter from the clerk stating that "[p]ursuant to instruction from the Court, the documents have not been filed based on the enclosed Order entered by [the judge] on September 23, 2022." The order placed the complainant on a restricted filer list as a "serial vexatious litigant." The order directed the clerk not to file any of the complainant's *pro se* cases without first receiving prior approval from the judge to whom the case is assigned. Court records show the complainant has brought more than 90 civil cases in the judge's district since 2019.

Insofar as the judicial complaint challenges the judge's order dismissing the civil complaint, denying leave to appeal in forma pauperis, denying leave to amend, or instructing the clerk not to file the May 2024 civil complaint, 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) (misconduct does not include "an allegation that calls into question the correctness of a judge's ruling"). The complaint's allegations are otherwise vague and "frivolous," or "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton  
Chief Judge

Filed: July 12, 2024

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