

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-24-90054

In re Complaint of John Doe*

This a judicial misconduct complaint by a plaintiff against a district judge who granted summary judgment to the defendants in his civil rights action.

The judicial complaint alleges that the judge had a conflict of interest because the attorneys representing the defendants previously represented the judge when he was an assistant state's attorney more than eight years earlier. The complaint asserts that the judge's "failure to disclose this conflict and recuse himself from the case created an appearance of impropriety." The complaint also alleges that the judge "made a series of rulings in the case that contradicted well established 8th Circuit precedent and appeared to exhibit bias in favor of the defendants." The complainant does not assert, however, that he filed a motion for recusal.

In the underlying case, the complainant sued five county jail employees alleging they used excessive force during altercations after his arrest. The magistrate judge recommended that summary judgment be granted for the defendants on all claims based on qualified immunity, except for one defendant's alleged use of a wrist lock when the complainant was handcuffed. The magistrate judge stated that "[i]f the district judge concludes [the] wrist lock claim was sufficiently pled, the complaint should be dismissed only in part as to [that defendant]." The magistrate judge stated

*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.

that, alternatively, the district judge “could decline to consider [the] wrist lock claim as not sufficiently pled in [the] complaint and grant defendants’ motion for summary judgment in its entirety.”

Both parties filed timely objections to the report and recommendation. The defendants argued that the excessive force claim based on the use of a wrist lock was not sufficiently pleaded: the use of a wrist lock was not alleged in the complaint and first appeared in the response to their motion for summary judgment, “buried in a list of nine allegations . . . [specifying] genuine issues of material fact. The district judge agreed and granted summary judgment for the defendants on all claims. The judge explained that because the civil rights complaint did not give fair notice of the wrist lock claim, the defendants had not impliedly consented to amendment of the complaint or waived the argument that the claim was insufficiently pleaded.

The judicial complaint asserts that the district judge’s decision is an example of his partiality. The complaint asserts that the judge’s acceptance of the defendants’ “belated” objections to the report and recommendation “went against the Judge’s own rulings in other cases and 8th Circuit precedent.” The complaint adds that the judge’s “selective adoption of only the portion favoring the Defendants’ Summary Judgment raises significant concerns [and] was clearly erroneous due to flawed reasoning, erroneous rulings, and prejudice.” The complaint alleges that the judge wrongly employed the *de novo* standard of review, and erred in disturbing the magistrate judge’s factual determination that the defendants’ failure to object constituted implied consent to litigate the claim.

“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1). The complaint’s many allegations of error in the judge’s grant of summary judgment must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B). The allegation of bias or partiality in favor of the defendants is dismissed as “lacking sufficient evidence to raise an

inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton
Chief Judge

Filed: October 17, 2024
