

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-25-90082

In re Complaint of John Doe*

This is a complaint of judicial misconduct by a non-party against a district judge who is presiding in three particular civil cases.

The complainant states that she “is not involved in the underlying court cases,” but is an “ordained minister and spiritual advocate” for the lead plaintiff in them. The plaintiffs filed the lawsuits against state judges and the state bar association. They sought to enjoin a state prosecution against the lead plaintiff, and to invalidate restrictions on the practice of law so that the other plaintiff could represent the lead plaintiff without qualifying as a member of the bar. The plaintiffs filed a motion for an emergency temporary restraining order in all three cases. The motion sought to enjoin state judges from “initiating, enforcing, or continuing any new or pending state criminal or contempt charges or related proceedings” against the lead plaintiff. The judge denied the motion, stating that he declined to “enjoin a pending state court criminal case where the state plainly has jurisdiction.” In the same order, the judge stayed discovery and thus denied the plaintiffs’ motion for issuance of subpoena duces tecum until the court determined whether the complaints triggered federal subject matter jurisdiction.

*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 complaint alleges that the judge summarily denied the emergency motion for temporary restraining orders, “without a hearing or thorough review, invoking Younger abstention and the Rooker-Feldman doctrine prematurely and erroneously.” The complainant asserts that this allowed state proceedings to continue, exposed the lead plaintiff to incarceration, and denied him access to federal remedies.

The complaint asserts that the judge’s order “shows bias toward state proceedings and defendants,” and thus that the judge breached his oath of office by failing impartially to administer justice. The complaint alleges that the judge violated the Code of Conduct for United States Judges. Specifically, the complaint asserts that the judge failed to (1) uphold the integrity and independence of the judiciary (Canon 1) by “applying abstention doctrines without evidence or hearing,” (2) avoid the appearance of impropriety (Canon 2) by accusing the second plaintiff of unauthorized practice of law, and (3) perform duties fairly, impartially, and diligently (Canon 3) by failing “to diligently review” the plaintiffs’ 102-page motion for an emergency temporary restraining orders. Last, the complaint asserts that the “order’s tone suggests bias.”

“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling.” Rule 4(b)(1). The complaint is dismissed as “directly related to the merits of a decision or procedural ruling”—the judge’s order denying the motion for a temporary restraining order and staying discovery. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B). The complaint is otherwise dismissed as “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). The allegation of bias is conclusory and based purely on the ruling being adverse to the plaintiffs. Nothing in the order’s “tone” suggests otherwise.

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton
Chief Judge

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