

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-26-90078

In re Complaint of John Doe*

ORDER

This is a judicial complaint against the Chief Judge of the Eighth Circuit. It was referred to me as the next most senior circuit judge for review and appropriate action. See 28 U.S.C. § 351(c); Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States [the “JCP Rules”]. After careful review of the lengthy judicial proceedings underlying the complaint, I conclude that, like an earlier judicial complaint dismissed by the Chief Judge in September 2024, this repeated complaint fails to set forth any argument or authority to justify the requested relief and therefore I dismiss the complaint. A rather detailed review of these prior proceedings is required to explain this conclusion.

In November 2018, the complainant filed a petition seeking federal habeas relief from the state court denial of his motion for post-conviction relief from his conviction for multiple felonies. He alleged that state officials had violated his constitutional rights. The state respondent moved to dismiss on the ground the petition was not filed within the governing one year limitations period in 28 U.S.C. § 2244(d)(1)(A). The district judge dismissed the action as untimely filed and the complainant’s subsequent motion for reconsideration in May 2019. This court denied the complainant leave to appeal in form pauperis and dismissed the appeal for failure to prosecute in June 2019. We entered a preliminary judgment in September,

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

and our mandate issued on November 7, 2019. 8th Cir. Dkt. No. 19-2142. The Supreme Court denied the complainant's petition for a writ of certiorari in March 2020.

On May 13, 2024, the complainant filed a "motion for reconsideration and/or to reopen [the] case and file an amended complaint." The district judge denied the motion in a docket order, stating that the case was closed, the complainant's motion was untimely, and the motion failed to provide argument or authority permitting the judge to reconsider the prior judgment, reopen the case, or otherwise grant leave to proceed with the proposed amended complaint. The order was signed by the judge and set forth the name of the clerk who entered the docket order.

On May 21, 2024, the complainant filed a document entitled "Objection" to the denial of his motion. On June 10, he filed a motion "Against Western District Court Officials" in the district court, identifying the court of appeals in the caption. The district judge denied the objection on June 11, "insofar as it was intended as a request for this court to reconsider" its May 13, 2024 order. Construing the June 10 filing as a notice of appeal, the court also denied leave to proceed in forma pauperis and forwarded the filing to the court of appeals.

The complainant then filed a judicial complaint against the district judge, alleging that the denial of his motion for reconsideration in a docket entry by the clerk is "evidence of rubber stamping," and that the motion was not fully considered because the motion and its attachments were returned to him and never filed, meaning the "clerk and judge" failed to consider the legal circumstances alleged in this filing. The complainant alleged he is "left in limbo" on his objection, and the judge and clerk abused their discretion "when they created and facilitated fraudulent orders [the notice of appeal], and in forma pauperis documents based on their copy" of his filing.

The Judicial Council of the Eighth Circuit treated this as a Complaint against the district court judge and others governed by 28 U.S.C. §§ 351-364, assigning it

JCP No. 8-24-90044. The Complaint was referred to the Chief Judge for his review. See JCP Rule 11(a). On September 19, 2024, the Chief Judge dismissed the Complaint for multiple reasons, concluding (i) it challenged the merits of the judge's decisions and orders and must be dismissed as "directly related to the merits of a decision or procedural ruling," see 28 U.S.C. § 352(b)(1)(A)(ii) and JCP Rule 4(b)(1) (misconduct does not include "an allegation that calls into question the correctness of a judge's ruling"); (ii) unsupported allegations that the motion and attached documents were not filed or fully considered by the judge are "frivolous," see 28 U.S.C. § 352(b)(1)(A)(iii) and JCP Rule 11(c)(1)(C), because the district court docket sheet shows that the documents were filed in the district court, where they are available for review electronically; (iii) the judge ruled on the complainant's objection within a month of its filing, one day after he filed the judicial Complaint, which fails to allege delay that might constitute misconduct, see JCP Rule 4(b)(2); (iv) the allegation that the judge created fraudulent orders in construing the June 10 filing is "frivolous"; (v) allegations that the clerk committed misconduct are not appropriate for consideration under the Act, see 28 U.S.C. §§ 351(a) and 352(b)(1)(A)(i); JCP Rule 11(c)(1)(G);¹ and (vi) the motion failed to set forth argument or authority justifying the requested relief.

On February 2, 2026, the complainant submitted for filing in this court a motion to recall our November 7, 2019 mandate in Dkt. No. 2142, arguing Missouri officials violated his constitutional rights in the underlying action and no statute of limitations bars federal habeas relief if "the judgment is void," citing Fed. R. Civ. P. 60(b)(4). The documents were incorrectly returned to the complainant. On February 24, he filed a petition for a writ of mandamus challenging the Clerk's Office failure

¹The judicial complaint procedure does not apply to other officials who work for or appear in the federal courts, nor to government entities or private persons or entities. See Rule 4 of the Rules for Judicial Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States; Report of the Judicial Conduct and Disability Act Study Committee ("Breyer Committee"), 239 F.R.D. 116, 239 (2006); and "Illustrative Rule 1(e)."

to take action on his motion to recall the mandate. 8th Cir. Dkt. No. 26-1377. On March 3, the court entered an order under 8th Circuit Rule 27A(a) stating that the motion to recall the mandate was incorrectly docketed on February 2, 2026 and “has been refiled and referred to the court for consideration and disposition.”

Consistent with our handling of requests for relief filed before an appeal has been briefed and submitted for decision on the merits, the refiled February 2 and the February 24 motions were referred to a randomly selected Administrative Panel consisting of the Chief Judge and active judges David R. Stras of Minnesota and Jonathan A. Kobes of South Dakota. On March 5, acting pursuant to directions from the administrative panel, judge orders were entered by the Clerk of Court “at the direction of the Court” denying the motion to recall the mandate in No. 19-2142 and denying as moot the petition for a writ of mandamus in No. 26-1377. On March 18, responding by letter to the complainant’s inquiry, the Clerk of Court stated:

We received your documents dated March 8, 2026. On March 5, 2026, the judgment and mandate were issued in your mandamus petition. The court’s consideration of the matter has concluded. Your case is closed, and no further action will be taken on your documents.

On March 17, the complainant sent a letter to Judge Stras, a member of the administrative panel, with the subject line “No. 26-1377, Petition for En Banc Disposition,” attaching a Petition for En Banc Disposition in No. 19-2142 asserting that the court erred in denying his motion to recall the mandate because the March 5 Order resulted from judicial officer abuse of discretion and a March 11 “perjured” declaration by the Missouri Attorney General. The complainant filed this document on March 30. On April 10, the complainant filed a Petition for En Banc Disposition dated March 11, 2026. On April 21, the ad panel directed that the Petition be accepted as timely filed and circulated to all circuit judges, completing the ad panel referral. On May 12, 2026, the court entered a judge’s order denying the petition for rehearing en banc and the petition for panel rehearing.

On June 9, the complainant filed what has been determined to be a second JCP Complaint, a letter to the Missouri Commission on the Retirement, Removal and Discipline of judges captioned “Re: Ethics Complaint Against Chief Justice” and an attached “Petition for Writ of Mandamus” dated May 20, 2026, addressed to “Supreme Court of the United States,” asking the Court to “direct[] the Eighth Circuit Appeals Court to recall its mandate, plac[e] the petitioners’ [federal habeas petition] back on the active docket or revers[e] the [underlying] criminal convictions . . . since the State of Missouri perjured itself defending alleged indicted offenses no one committed.” The Complaint was sent to me because it “names the Chief Circuit Judge, and you are the next most senior judge . . . not disqualified,” with a copy of the Complaint “forwarded . . . to [the Chief Judge] . . . as required by the [JCP] Rules.”

The judicial complaint statute is limited to conduct by a circuit judge, district judge, bankruptcy judge, or magistrate judge that is “prejudicial to the effective and expeditious administration of the business of the courts,” and to “allegations that such judge is unable to discharge all the duties of office by reason of mental or physical disability,” which is not at issue here. 28 U.S.C. § 351(a), (b); JCP Rule 1.

The phrase “prejudicial to the effective administration of the business of the court” is not subject to precise definition While the Canons [of the Code of Conduct for United States Judges] are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and the Rules, as interpreted and applied by judicial councils

JCP Rule 4 Commentary. Likewise, state judicial conduct statutes and rules may be instructive but do not control this question of federal law. The complainant’s May 20, 2026 letter to the state judicial conduct officials asserted that the Chief Judge operating as a federal appellate judge “was within the jurisdiction of the Missouri Supreme Court Rules . . . and Missouri civil laws” and committed the following violations of specific Missouri statutes:

- “aiding and abetting Missouri judicial officers . . . where Missouri benefits”
- “misconduct in the administration of justice”
- “conspiring with court clerk to obstruct justice”
- “acceding to corruption defined within [the Petition for Writ of Mandamus]”
- “obstruction of justice”

This would not establish cognizable judicial misconduct under federal law so I need not inquire whether the state officials received and took action under their state law authority. Rather, I must determine whether these assertions *as supported in the Petition for Writ of Mandamus* would establish conduct *by the Chief Judge* that is “prejudicial to the effective and expeditious administration of the business of the courts” within the meaning of the JCP Rules.

As best I can interpret the document, the complainant’s Petition for Writ of Mandamus argues that the Eighth Circuit’s denial of his direct appeal and the denial of his motion to recall the mandate as untimely are “void judgments,” and “these denials, without opinion are indicated as directions by the chief justice [who] indicates in the March 18, 2026 letter . . . that he does not intend to provide petitioner with a lawful adjudication but intend to let the record remain tainted with unlaw[ful] testimony submitted and allowed by the United States.” Putting aside that these arguments were unsuccessfully litigated by the complainant all the way to the Supreme Court in 2019-2020, which means he is improperly attempting to use the judicial misconduct procedure for what must be addressed by appeal, the assertion that these judicial orders were conduct “directed by the chief justice” is simply wrong, as the complainant acknowledged when he first attached the Petition for Writ of Mandamus to his letter to Judge Stras as a member of the administrative panel. The Petition further alleges that “[the Chief Judge] appear[s] to have sent those documents to the clerk without filing them . . . for adjudication by the en banc panel as the law would necessitate.” That allegation is plainly refuted by the May 12, 2026 Orders of the court in No. 19-2142 and No. 26-1377 denying the complainant’s petition for en banc and panel rehearing of the order denying the motion to recall the mandate. The

Petition concludes with the assertion that “the United States District and Eighth Circuit’s treatment of petitioner brings about the judicial misconduct prohibited by the Canons.” Again, this does not allege conduct by the Chief Judge.

As with the allegations in the complainant’s first judicial complaint against a district judge, the allegations in this second complaint that could possibly be construed as misconduct by the Chief Judge must be dismissed as “directly related to the merits of a decision or procedural ruling,” namely, his dismissal of the first judicial complaint, see JCP Rule 4(b)(1) (misconduct does not include “an allegation that calls into question the correctness of a judge’s ruling”), or are allegations regarding Eighth Circuit procedures and processes that “are not appropriate for consideration under the Act,” see JCP Rule 11(c)(1)(G).

The complaint is dismissed in its entirety. Although I believe the complainant’s repetitive and frivolous judicial complaints reflect abuse of the judicial misconduct complaint procedure, I decline to suggest or recommend that the judicial council take action to restrict the filing of future complaints under JCP Rule 10(a) at this time. But the complainant is now aware that such remedies may become needed.

June 23, 2026

s/ James B. Loken

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