

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90083

JCP No. 08-22-90084

In re Complaint of John Doe¹

This is a judicial complaint brought by a criminal defendant (“complainant”) against two United States magistrate judges assigned to the complainant’s criminal case.

The judicial complaint alleges that the first magistrate judge “prejudiced [the complainant] by assigning [a certain attorney] to [the] case,” resulting in a “blatant miscarriage of justice” due to the attorney’s actions. According to the judicial complaint, the first magistrate judge “turned a blind eye” to the attorney’s prejudicial conduct during proceedings. The judicial complaint asserts that the first magistrate judge and the attorney “tried to manipulate [the complainant] not to” testify at an evidentiary hearing. The judicial complaint maintains that the magistrate judges “have become [e]ntangled in a web of corruption initiated by corrupt D.E.A. interdiction drug task officers” and are “trying to push the case forward illegally.”

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). The record shows that the second magistrate judge appointed the attorney as the complainant’s counsel. The attorney the filed a motion to suppress evidence and a request for an evidentiary hearing on the complainant’s behalf.

¹Under 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.

The first magistrate judge presided over the evidentiary hearing. The transcript shows that the complainant wanted to continue the hearing. The magistrate judge denied the request, explaining to the complainant, “You’ve got good, skilled counsel that’s been appointed at your request, by the way, *after multiple lawyers and multiple pleadings where you’ve complained about your lawyer*. You’ve got good counsel here that has known about the hearing. We’ve been scheduled. He can cross-examine the witnesses. . . . Your case has been pending for two years, over two years.” (Emphasis added.) The magistrate judge also admonished the complainant for repeated interruptions. Ultimately, the complainant’s attorney notified the magistrate judge of the complainant’s desire to testify at the hearing, which the complainant did. The magistrate judge issued a report and recommendation (R&R) to the district court in which the judge recommended denial of the complainant’s motion to suppress. In the R&R, the magistrate judge found that the complainant’s “testimony is not credible in all material aspects” but that “all law enforcement officers who testified at the suppression hearing were credible.”

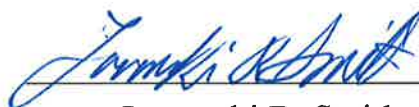
The second magistrate judge subsequently denied the complainant’s pro se motion for the appointment of new counsel or, in the alternative, to proceed pro se and the motion of defense counsel to withdraw from representing the complainant. The magistrate judge recounted the “tortured history” of various appoints of counsel to the complainant. The magistrate judge concluded that “the current request for new counsel or that the defendant be allowed to proceed pro se is not justified or in the interests of justice,” considering the trial date, pending suppression motion, and “the fact that [the complainant] has already been afforded the opportunity to represent himself only to then ask the Court to appoint new counsel.” The magistrate judge did acknowledge a “breakdown in communication between counsel and [the complainant] as well as [the complainant’s] continued expression of dissatisfaction with counsel.” The magistrate judge was “sympathetic to counsels’ circumstance” but found it “apparent that [the complainant] will continue to complain about any counsel that represents him.” The district judge “ha[d] no expectation that it could appoint any

counsel who would do a better job than [current counsel]. The time has simply come for case to move toward resolution.”

Having reviewed the record, I conclude that to the extent that the judicial complaint challenges the magistrate judges’ orders, the allegations must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the magistrate judges are prejudiced against the complainant, have conspired against the complainant, or have engaged in other judicial misconduct, the allegations are “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(D).

The judicial complaint is dismissed.

November 7, 2022



Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit