

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-23-90079

In re Complaint of John Doe¹

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

The judicial complaint alleges that the magistrate judge acted impartially in ruling on pretrial motions in the complainant’s criminal case. Specifically, the complainant argues that the magistrate judge failed to follow the law in denying the complainant’s motion to dismiss and is therefore “an accomplice to the crimes [of the police] for permitting these crimes to occur with [the magistrate judge’s] approval and judicial powers.” The complainant asserts that the magistrate judge was biased in refusing to acknowledge certain case law, resulting in the denial of the complainant’s constitutional rights. Finally, the complainant alleges that the magistrate judge aided the police’s unlawful conduct.

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 complainant’s counsel filed an amended motion to challenge jurisdiction and dismiss indictment. The magistrate judge issued a report and recommendation (R&R) recommending that the district court deny the motion.

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.

First, the magistrate judge concluded that the district court had “jurisdiction over the alleged crimes at issue in th[e] case” and that “venue in th[e] district [was] proper.” Second, the magistrate judge rejected the complainant’s argument that the district court should dismiss the indictment because a detective allegedly violated a federal law “by using fraud and deceit to access [the complainant’s] private Facebook messaging service.” The magistrate judge concluded that the federal law “does not prohibit a law enforcement officer from acting undercover to communicate with a potential criminal over the internet” and cited cases in support. The district court adopted the magistrate judge’s R&R and denied the motion.

Having reviewed the record, to the extent the judicial complaint’s allegations challenge the magistrate judge’s R&R, they 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 judge violated the complainant’s constitutional rights, acted impartiality, aided and abetted police misconduct, or engaged in other judicial misconduct, such allegations are “frivolous, 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)(C), (D).

The judicial complaint is dismissed.

July 18, 2023



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