

# JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-24-90056

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In re Complaint of John Doe\*

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This is a judicial misconduct complaint filed by a criminal defendant against a district judge presiding in his case.

The complainant alleges that there is a long-running conspiracy against him involving various judges, prosecutors, and defense attorneys. The complaint and two supplements allege that an e-mail chain shows the district judge, a magistrate judge, former defense counsel, and the prosecutor colluded and compromised the complainant's defense. According to the complainant, the judges allowed former defense counsel to violate attorney-client privilege and to provide defense information to the prosecutor in an *ex parte* sealed motion to remove defense counsel. The complaint alleges that current counsel and the district judge are preventing the complainant from presenting a defense of governmental and prosecutorial misconduct at trial.

The e-mail chain shows that on February 3, 2022, the complainant filed a *pro se* motion to substitute new counsel. The docket contains staff notes dated February 4, 2022, which provide: "[F]iled as ex parte entry and document as to Defendant's counsel only per [the magistrate judge's] chambers." On the same date, defense counsel e-mailed the courtroom deputy for the assigned district judge (the subject

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\*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.

judge in this complaint) about the *pro se* motion, and copied the prosecutor. Defense counsel stated he did not oppose the motion, but could show that the complainant's allegations about him were incorrect. Counsel made clear that he "cannot disclose to the Court communications [he'd] had with [the complainant] unless the Court grants [counsel] leave to do so." Counsel asked the court to advise him how to respond to the motion.

The magistrate judge's courtroom deputy then e-mailed defense counsel, advising that "only" defense counsel had access to the complainant's *pro se* motion. The deputy directed counsel to file a redacted version and a response *ex parte* under seal, and to contact the clerk's office for assistance with filing so that the response was available only to the court. On February 7, 2022, counsel filed a redacted version of the motion to substitute new counsel. Two days later, he filed a motion to withdraw. The magistrate judge granted the motion to withdraw and dismissed the complainant's motion to substitute.

The complainant filed a judicial complaint against the magistrate judge regarding the e-mails alleging improper collusion. The chief circuit judge dismissed the complaint because the record showed that the magistrate judge and court staff "took care to protect any confidential and privileged information," and that the complaint's allegations were lacking sufficient evidence to raise an inference that misconduct occurred. *In re Complaint of John Doe*, No. 08-22-90043, at \*3 (8th Cir. July 21, 2022).

The complainant now alleges that the district judge and current defense counsel are "conspiring to violate [his] fundamental rights of compulsory process" and to assert trial defenses of outrageous government conduct and prosecutorial misconduct. The complaint alleges that the district judge was involved in the alleged e-mail misconduct and should be removed from the case.

The record in the underlying criminal case shows that current defense counsel filed a motion to determine his obligation with respect to the complainant's proposed defense—that the prosecutor allegedly manipulated one of his prior attorneys to reveal confidential information, and that the attorney testified against the complainant's interests at the grand jury. The motion noted that both the prosecutor and the prior defense attorney disputed the complainant's contentions, and that the grand jury transcript showed the defense attorney did not testify. The motion asserted that counsel had no obligation to present the proposed defense due to lack of factual support, and requested a pretrial ruling.

After hearing from the government, defense counsel, and the complainant at a hearing, the district judge granted counsel's motion. The complainant then asked the judge to recuse himself from the case because of his alleged involvement in the "crimes" arising from the e-mail chain. The district judge denied the motion to recuse. The complainant also sent a letter to the district judge requesting his recusal, allegedly providing "original documents that are proof that [the judge] knew about the illegal ex parte e-mails" between the prosecutor, former defense counsel, and the magistrate judge because the district judge's judicial assistant was directly involved.

"Cognizable misconduct does not include an allegations that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1). The complaint's allegations challenging the district judge's rulings, including those on recusal and on counsel's motion regarding defense obligations, 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 allegations of criminal conduct, retaliation, or other misconduct are dismissed as "frivolous" and "lacking sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton  
Chief Judge

Filed: November 1, 2024

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