

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-25-90081

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In re Complaint of John Doe\*

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This is a complaint of judicial misconduct by a criminal defendant against a magistrate judge who is assigned to his case.

The complainant alleges that the judge participated in an ex parte communication about a joint motion for a continuance without notice to him, an opportunity to respond, or his consent. The complainant alleges that defense counsel acted without his knowledge and violated rules of professional conduct. The complainant alleges that “because of the denial of [his] many requests to address this unauthorized ‘Joint Continuance,’ by the Court,” he was forced to file a civil suit against all parties so he would be given the opportunity to be heard.

The complainant asserts that on the day that his petition for a writ of prohibition was filed with the court of appeals, he was unexpectedly taken to a hearing before the subject judge about whether he wanted to continue with his defense attorney. At the hearing, the judge stated the hearing would be off-the-record and placed under seal. The complainant believed that when his petition for a writ of prohibition was docketed, the district court would lose jurisdiction. The complainant asserts that he is “confused as to why or how [the judge] had the jurisdiction to address [his] concerns and then put [the] hearing ‘off-the-record’ and

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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.

under seal.” The complainant states he is “concern[ed] that [the judge] authorized a hearing in the ‘clear absence of all jurisdiction,’” and “if this is the situation,” then the judge committed misconduct.

The record shows the complainant was charged with unlawful possession of a firearm as a felon. The court appointed a defense attorney. After the judge entered an initial case management order, the prosecutor and defense counsel filed a joint motion to continue deadlines. The motion requested that a scheduling conference be moved about five weeks later to allow the parties to review eleven videos and then discuss how to proceed. The motion also asked the court to exclude that time under the Speedy Trial Act.

The judge granted the motion and entered an amended case management order. The judge explained that the parties stated they needed time to evaluate videos and several other pending investigations and proceedings that might influence how to best proceed in the case. The judge found that the needs of justice served by a continuance outweighed the best interest of the public and the defendant in a speedy trial.

The complainant later filed several pro se motions. The judge entered a docket text order stating the court would not accept the motions because the complainant was represented by counsel, but “counsel should be prepared to address these documents at motions hearing” scheduled for late August, unless relief was sought by counsel earlier.

On August 25, 2025, the complainant filed a petition for a writ of prohibition with the court of appeals. The petition sought a bar on enforcement of the joint motion to continue due to counsel’s failure to provide the complainant with a copy of the motion and to obtain his consent to the delay. On August 26, 2025, the judge issued an order/notice of a status conference set for the following afternoon. At the

hearing the next day, the complainant orally requested relief in the form of new appointed counsel. The judge granted the complainant's request. One day later, the court of appeals denied the petition for a writ of prohibition.

The complaint's allegation that the judge engaged in ex parte communications based on the granting of the parties' joint motion for a continuance is "lacking sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(D). To the extent that the complainant alleges that the judge should not have granted a continuance, the allegation is 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 judge's failure to consider the complainant's pro se motions is not misconduct. *See* Rule 11(c)(1)(A); *see also United States v. Hunter*, 770 F.3d 740, 746 (8th Cir. 2014) (court need not consider pro se documents from party represented by counsel). The judge addressed the complainant's dissatisfaction with counsel and appointed a new attorney for him. The judge did not commit misconduct by holding a hearing while the complainant's petition for a writ of prohibition was pending. *See* Rule 11(c)(1)(A); *see also In re Jephunneh Lawrence & Assocs. Chartered*, 63 B.R. 318, 319 (Bankr. D.D.C. 1986) (unlike filing of notice of appeal, mere filing of petition for writ of prohibition does not immediately divest lower court of jurisdiction).

For these reasons, the judicial complaint is dismissed.

/s/ Steven M. Colloton  
Chief Judge

Filed: December 29, 2025

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