

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-18-90085

JCP No. 08-18-90086

In re Complaint of John Doe¹

This is a judicial complaint filed by a pro se inmate against the United States district judge who presided over the inmate's criminal case and the United States magistrate judge to which the district judge referred all pretrial matters.

The inmate elected to proceed pro se in the criminal case. The inmate filed a pro se criminal complaint charging certain persons with violations of various criminal statutes. The magistrate judge denied the pro se criminal complaint, concluding that "[a] private individual is not entitled to file a criminal complaint against another alleging violation of federal law." The inmate subsequently pleaded guilty.

After the district judge sentenced the inmate, the government appealed to this court, seeking a remand for resentencing. This court vacated the sentence and remanded the case to the district judge. At resentencing, the inmate moved to withdraw the guilty plea. The basis for the motion was the inmate's belief that the government breached the plea agreement. The district judge denied the motion. The district judge concluded that while it was "still an arguable question" whether the government breached the plea agreement, the judge had complied with Federal Rule of Criminal Procedure 11 and permitted the inmate to plead guilty pursuant to the

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.

plea agreement only after the judge was “convinced and satisfied that [the inmate] knowingly and voluntarily entered into it.” The district judge also denied the inmate’s pro se motion to dismiss for lack of subject-matter jurisdiction after hearing argument from the inmate.

The judicial complaint alleges that the district judge and magistrate judge “have demonstrated Extreme Bias, Partiality[,] and Conspiratorial behavio[rs]” and intentionally acted “in c[a]hoots with the Prosecutor and Federal players” against the inmate and his co-defendant. Specifically, the inmate claims that the magistrate judge “was informed [through the pro se criminal complaint] of witness tampering by FBI and Public Defenders Office agents . . . [a]nd allowed it to continue.” The inmate asserts that the district judge (1) abused the judge’s discretion and exhibited favoritism by enforcing the allegedly breached plea agreement, and (2) erroneously “refused to prove Jurisdiction when Challenged.”

The judicial complaint’s bare, speculative allegations that the district judge and magistrate judge displayed bias, partiality, and conspiratorial behavior are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(C)-(D). To the extent the judicial complaint challenges the magistrate judge’s denial of the pro se criminal complaint and the district judge’s denial of the pro se motion to withdraw the guilty plea and the pro se motion to dismiss for lack of subject-matter jurisdiction, the allegations are directly related to the merits of the judge’s decisions or procedural rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 3(h)(3)(A), 11(c)(1)(B).

The complaint is dismissed.

December 20th, 2018

A handwritten signature in black ink, appearing to read "Lavenski R. Smith", written in a cursive style.

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