

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90016

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In re Complaint of John Doe¹

This is a judicial complaint by a pro se inmate against the United States magistrate judge and United States district judge who presided over his criminal trial.

The judicial complaint alleges that the magistrate judge showed partiality toward the government in granting the complainant's counsel's motion to continue the trial² despite the complainant's objection to the continuance. The judicial complaint alleges that the magistrate judge "conspired with the government to delay [the complainant's] tr[ia]l in violation of the Speedy Trial Act" and engaged in "ex parte communications [with] the government[] . . . regarding the delay in processing . . . evidence" against the complainant.

The judicial complaint alleges that the district judge (1) erroneously overruled the complainant's objection to two government witnesses; (2) "made material representations so as to enhance [the complainant's] sentence," such as "rul[ing] that [the complainant] said the drugs were his"; (3) improperly sustained the government's objections to questions the complainant asked a law enforcement agent about

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.

²The district court subsequently granted the complainant's motion to proceed pro se.

probable cause to support a search warrant; and (4) erroneously denied the complainant's request for a *Franks* hearing.³

These allegations are directly related to the merits of the district judge's decisions or procedural rulings and are not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaint alleges that the judges engaged in ex parte communications and conspired with the government, these 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). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

April 12, 2019



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

³*See Franks v. Delaware*, 438 U.S. 154 (1978).