

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90057

In re Complaint of John Doe¹

This is a judicial complaint filed by a criminal defendant against the United States magistrate judge who presided over the criminal defendant's change-of-plea hearing and sentencing.

The judicial complaint alleges that the magistrate judge violated the complainant's right against double jeopardy by imposing a federal sentence for the same conduct underlying pending tribal court charges against the complainant.

Having reviewed the record, I conclude that no cognizable conduct has occurred. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 4(a) ("Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts."). The record shows that the complainant, who was represented by counsel, pleaded guilty pursuant to a plea agreement. The complainant, through counsel, filed no objections to the presentence report and never argued that a federal sentence would violate his constitutional right against double jeopardy.

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.

The judicial complaint attacks the magistrate judge's sentencing decision and is therefore not cognizable in a judicial complaint. *See* 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). Accordingly, the allegation must be dismissed.

The complaint is dismissed.

November 25th, 2019



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