

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

---

JCP No. 08-21-90028

---

In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by a criminal defendant (“complainant”) against the United States magistrate judge assigned to the complainant’s case.

The judicial complaint alleges that the magistrate judge “had an inappropriate, illegal, and unethical, Ex Parte communication with” the complainant’s defense counsel concerning the complainant’s pro se motion for new counsel. According to the judicial complaint, the magistrate judge’s “illegal and unethical Ex Parte meeting” shows that the magistrate judge was “bias[ed] . . . against [the complainant as] an [i]ndigent [d]efendant.” Attached to the judicial complaint is a letter from the complainant’s former defense counsel to the state office of chief disciplinary counsel. The letter responds to a complaint that the complainant lodged against counsel. In the letter, counsel states:

[The complainant] filed a motion with the court requesting the appointment of new counsel . . . . In that motion, [the complainant] detailed that [the complainant] had secretly recorded meetings with [defense counsel]. Prior to the hearing the [c]ourt spoke to Counsel regarding the allegation of secretly recorded meetings. The [c]ourt informed Counsel that [the court] didn’t think we should have to put up with that kind of behavior and that [the court] thought the attorney relationship had broken down. The [c]ourt told Counsel [that the court]

---

<sup>1</sup>Under 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.


was going to appoint new CJA Counsel to represent [the complainant]. The [c]ourt made no findings supporting the claims [the complainant] made regarding [the complainant's] representation.

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). The record shows that the complainant filed a pro se motion for new counsel. That same day, according to defense counsel's aforementioned letter, the magistrate judge discussed the motion with defense counsel. The magistrate judge then set a hearing on the motion. According to the clerk's minutes, "[g]overnment counsel, defense counsel, and defendant [were] present in person for [the] hearing. . . . to discuss [the complainant's] Motion to Appoint Counsel." The magistrate judge discussed the motion with the complainant and defense counsel out of the government's presence. "Upon further review and after obtaining further information from the parties, the [magistrate judge] . . . grant[ed] [the complainant's] motion and appoint[ed] new CJA counsel and release[d] [defense counsel] from [counsel's] duties." The magistrate judge informed the complainant that the magistrate judge would "not grant any further requests for new counsel."

"Cognizable misconduct includes . . . engaging in *improper ex parte* communications with parties or counsel *for one side in a case*." J.C.U.S. Rule 4(a)(1)(C) (emphases added). Here, the magistrate judge did not engage in an improper communication with the opposing side; instead, the magistrate judge discussed the complainant's motion *with the complainant's defense counsel*. Furthermore, the magistrate judge granted the complainant's requested relief after notice and a hearing. As a result, the judicial complaint is dismissed because the alleged conduct "is not prejudicial to the effective and expeditious administration of the business of the courts." J.C.U.S. Rule 11(c)(1)(A).

The judicial complaint is dismissed.

August 24, 2021

A handwritten signature in blue ink, reading "Lavenski R. Smith", written over a horizontal line.

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