

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-19-90022

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

This is a judicial complaint by a federal defendant against the United States magistrate judge and United States district judge presiding over his criminal proceeding.

The judicial complaint challenges the magistrate judge’s order of detention, the magistrate judge’s report and recommendation recommending the denial of the defendant’s motion to suppress evidence, the district judge’s order striking the defendant’s pro se brief in support of the suppression, and the district judge’s denial of the defendant’s motion to suppress. First, the judicial complaint alleges that the magistrate judge “ma[d]e a substantive and material misstatement of law or fact, in which [the magistrate judge] BLATANTLY and KNOWINGLY misstate[d] the legal standards so that [the magistrate judge] may illegally deny bond to [the defendant].” According to the judicial complaint, the magistrate judge “‘confuse[d]’ and ‘confound[ed]’ the standards of dangerousness and the conditions that would reasonably assure the safety of the community and any other person along with the clear and convincing evidence standards.”

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<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.

Second, the judicial complaint alleges that the magistrate judge and district judge “show[ed] a substantial BIAS in favor of the [p]rosecution over the [d]efense in almost EVERY decision,” including the rulings on the suppression of evidence. The judicial complaint asserts that the magistrate judge “vouch[ed] for the credibility of the [p]rosecution [w]itnesses on the [c]ourt [r]ecord in [the] [r]eport and [r]ecommendation[,] and [the district judge] accept[ed] and adopt[ed] this” in its order denying the suppression motion. According to the complaint, both judges “continuously and deliberately ignore[d] the BLATANT perjury by these witnesses [and] the presentment and subornation of this perjury by the [p]rosecutor.”

Third, the judicial complaint alleges that the district judge struck the defendant’s pro se brief from the record “to help hide these acts and omissions by all concerned.”<sup>2</sup> According to the judicial complaint, the district judge should have considered this pro se brief instead of ignoring it.

These allegations are directly related to the merits of the magistrate judge’s or 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 magistrate judge and district judge were biased, 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.

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<sup>2</sup>In the order, the district judge stated it was striking the defendant’s pro se brief because the defendant “is represented by counsel.”

The complaint is dismissed.

May 24, 2019



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