

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-19-90032

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In re Complaint of John Doe¹

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

Attached to the judicial complaint is a transcript of the status conference held by the magistrate judge. During the status conference, the complainant's defense counsel stated that the defense was "asking for a motion to continue the trial date," noting "that the result of the suppression hearing [would] likely be dispositive and a plea would follow the result of that hearing." The magistrate judge replied, "So if that's the case, is it possible for the parties at this point to enter a conditional plea agreement so that obviously if the—if the court grants the motion to suppress[,] the case goes away presumably." The government agreed with defense counsel that "[t]he suppression motion is dispositive of the case." The government advised the magistrate judge that it had "offered a conditional plea agreement preserving the issues raised in the motion to suppress" and tailored the deadline to accept the plea agreement "to the deadline for notice of intent to plead guilty." The magistrate judge then told defense counsel that entering a conditional guilty plea was "probably the preferable option," given that the suppression hearing would not be held until *after*

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 deadline to give notice of intent to plead guilty. The magistrate judge explained that the judge was “not inclined . . . to continue the trial simply because of the court’s schedule. . . . [C]ases shouldn’t be continued under the Speedy Trial Act because of the court schedule.” The magistrate judge then stated:

So my inclination—you can file a motion to continue the trial if you want, and if there’s other grounds for continuing it, then let me know. But my inclination would be if the only reason is because of the timing of the motion to suppress, then it will probably be denied. And if, in fact, this hearing is dispositive of the outcome, then perhaps your client could enter into a conditional plea agreement. If he wins, then the plea goes away and the case goes away. If he doesn’t win, then he preserves the right to appeal the decision to the Eighth Circuit Court of Appeals, and so he’s in no worse position than he would be anyway. But anyway, I think what—that’s something for you to consider.

Thereafter, the magistrate judge discussed with the parties how long a trial would last so the magistrate judge could set aside a sufficient number of days for the trial. After discussing the potential length of trial, the magistrate judge commented to defense counsel:

All right. So, [defense counsel], think about this, and you can always file a motion to continue, and I’ll consider it on the merits. But based on a 2-day trial and only 27 days of the speedy trial clock, my guess is we would deny a motion to continue if it’s only based on the motion to suppress timing because we have a lot of flexibility, and a 2-day trial is easy for us to fit in July—or in January, and so while it might not go on January 2, we could easily get in a week later or something like that. And so—so unless there’s some other grounds for continuing the trial, I doubt that we would do that.

Now, your client doesn’t obviously have to enter any plea agreement, but—but I doubt that, whether he does or doesn’t, whether we would continue the trial.

So I will advise [the district judge] that we've got this pending motion to suppress and the timing of when we're going to be ruling on it or when we're going to have to rule on it, and we'll kind of go from there. And then if you need to file a motion to continue, you probably need to do that before the third level passes on this case

Defense counsel then addressed a concern with the magistrate judge that a continuance may be needed because defense co-counsel was out of the office until the deadline for the notice of intent to plead guilty. Defense counsel expressed that co-counsel would need "a chance to sit down and discuss the plea offer in more detail with our client." The magistrate judge advised defense counsel to file a motion for continuance and set forth the grounds for it. The government responded that it "would extend the deadline for the outstanding conditional plea offer to track the notice of intent deadline on any short continuance the Court elected to grant." Defense counsel then indicated that counsel would "file the motion to continue."

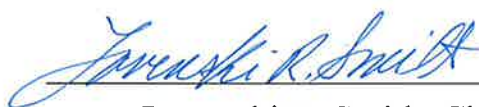
The record shows that, following the status conference, defense counsel did move for continuance of the trial date to (1) "provide time for any arguments and rulings pertaining to the Defendant's Motion to Suppress to be resolved," and (2) "extend the deadline for the Defendant to provide notice to the Court of [an] intent to plead guilty" given that lead counsel was "out of the state until" after the deadline. Consistent with the magistrate judge's statements at the status conference, the magistrate judge denied the motion to continue. The complainant subsequently provided notice of intent to plead guilty and entered a conditional guilty plea.

The judicial complaint alleges that the magistrate judge "crossed the line into actual bias when [the magistrate judge] expressed [a] preference for [the complainant] to plead the case out before [the complainant] had even seen the plea agreement." The complainant further alleges that the district judge "was responsible for, aware of—or reasonably should have been aware of—the actions of [the] [m]agistrate [j]udge . . . in applying coercion to overborn [sic] [the complainant's] will regarding pleading the criminal case out."

To the extent the judicial complaint challenges the magistrate judge's ruling on the motion to continue and the judge's reasons for denying the motion, the allegations are directly related to the merits of the magistrate 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 3(h)(3)(A), 11(c)(1)(B). To the extent the judicial complaint alleges that the magistrate judge was biased against the complainant and coerced the complainant (and that the district judge was responsible for such coercion), I conclude, having reviewed the status conference transcript, that such 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.

October 28th, 2019



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