

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-22-90043

In re Complaint of John Doe¹

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 an e-mail chain between the magistrate judge, the complainant’s court-appointed counsel, and the prosecutor shows that they colluded and compromised the complainant’s defense. According to the complainant, the magistrate judge permitted the complainant’s former counsel to violate attorney-client privilege and provide information in an *ex parte* sealed motion to the prosecutor. The complainant has provided a copy of the e-mail chain.

I have reviewed the record and e-mail chain. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). On February 3, 2022, the complainant filed an *ex parte*, *pro se* motion to substitute new counsel. The docket contains staff notes dated February 4, 2022, which provide: “[F]iled as *ex parte* entry and document as to Defendant’s counsel only per [the magistrate judge’s] chambers.”

On February 4, 2022, an e-mail exchange occurred between the complainant’s counsel and the court. Counsel e-mailed the assigned *district* judge’s courtroom

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.

deputy about the pro se motion and copied the prosecutor. Counsel stated, “While I do not oppose the court appointing new counsel[,] I do take issue with nearly everything that [is] set[] forth in [the] motion. I have well documented my communications with [the complainant] and can easily show that [the complainant is] not correct on his allegations.” But counsel made clear that counsel “cannot disclose to the Court communications [counsel] had with [the complainant] unless the Court grants [counsel] leave to do so.” Counsel requested that the court advise how to respond to the complainant’s pro se motion.


Shortly thereafter, the *magistrate* judge’s courtroom deputy e-mailed the complainant’s counsel, advising that “only” counsel had access to the complainant’s pro se motion and stating, “[The magistrate judge] asks that you review it and consider whether a redacted version can be prepared so the Government knows that there is a motion to substitute counsel and can respond. You can file the redacted version under seal.” Counsel responded by asking the courtroom deputy whether the magistrate judge wanted counsel to simply redact the motion to substitute or respond to the motion to substitute. The courtroom deputy advised counsel to “file a redacted version and . . . a response.” Counsel then e-mailed the courtroom deputy, requesting “permission to disclose under seal letters and other communications between [counsel] and [the complainant] . . . in order to adequately respond to [the] motion.” The courtroom deputy replied, “You have permission to submit your response ex parte (for in camera review) under seal. . . . [Y]ou may need to contact the Clerk’s Office to walk you through filing it so that your response is only available to the Court.”

On February 7, 2022, the complainant’s counsel filed a redacted version of the complainant’s motion to substitute new counsel. On February 9, 2022, the complainant’s counsel filed a motion to withdraw as counsel. That same day, the magistrate judge granted counsel’s motion to withdraw and dismissed the complainant’s motion to substitute.

The record and e-mail chain do not substantiate the complainant’s claim that the magistrate judge colluded with the complainant’s former counsel and the prosecutor or permitted the complainant’s former counsel to violate attorney-client privilege. To the contrary, the record shows that the magistrate judge and court staff took care to protect any confidential and privileged information. As a result, the complainant’s allegations are “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)(D).

Accordingly, the judicial complaint is dismissed.

July 21, 2022



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