

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-14-90024

In re Complaint of John Doe¹

This is a judicial complaint dated July 29, 2014, by a pro se civil litigant against the United States magistrate judge who entered a report and recommendation which recommended that the complainant's claims be dismissed. The complainant objected within fourteen days, conceding some of the complainant's claims should be dismissed and seeking to amend the remainder of the complaint. According to the judicial complaint, "[i]t was [the complainant's] understanding that once [the complainant] filed this [objection], [the complainant] should receive something back from the court either" granting or denying the complainant's request. The complainant also states, "There has been no response to [the complainant's] Objections" and concludes the magistrate judge engaged in misconduct by "not do[ing] anything once [the complainant] filed" objections to the report and recommendation.

"Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(3)(B). The complainant here does not assert the delay is due to an improper motive and does not allege a "habitual

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 judge complained about are to remain confidential, except in special circumstances not present here.

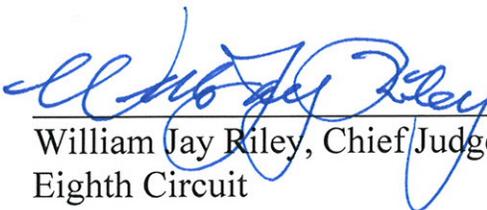
delay in a significant number of unrelated cases.” Id. Therefore, the complainant’s allegations must be dismissed.

Dismissal is also warranted because the complainant’s allegations “lack[] sufficient evidence to raise an inference that misconduct has occurred” *on the part of the magistrate judge*, 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rules 11(c)(1)(D); E.C. Rule 4(c)(3), because it is the assigned *district* judge who, after a party objects to a magistrate judge’s recommendation, must decide whether to “accept, reject, or modify” the magistrate judge’s “findings or recommendations,” 28 U.S.C. § 636(b)(1). Meritorious or not, the complainant’s allegations target the wrong judge.

The assigned district judge has, since the filing of this judicial complaint, issued a conclusive ruling as to the magistrate judge’s recommendations and the complainant’s objections, adopting the magistrate judge’s recommendations in part, but recommitting the balance back to the magistrate judge “for further consideration and analysis.”

For these reasons, the complaint is dismissed.

October 15, 2014



William Jay Riley, Chief Judge
Eighth Circuit