

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-14-90026 and 08-14-90027

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

This is a judicial complaint filed on September 8, 2014, by an inmate against the United States magistrate and district court judges who presided over complainant's petition for post-conviction relief. On June 1, 2012, complainant petitioned for habeas relief, raising allegations of ineffective assistance of counsel, sentencing errors, and prosecutorial misconduct. Between them, the magistrate and district judges issued several orders addressing complainant's various motions, including rulings as recent as February 11, 2013. By June of 2014, the magistrate judge had not issued a recommendation as to complainant's petition or to the government's motion to dismiss the petition.<sup>2</sup> At that time, complainant petitioned the Eighth Circuit Court of Appeals for a writ of mandamus. On June 9, 2014, the court of appeals ordered a status report from the district court. The magistrate and district judges both signed a response, explaining their workload and procedures for handling cases, detailing their existing work on complainant's case, and reporting that both judges attempt to work expediently, but neither will "rush through [cases] just to say they are done." This response also explained the delay in complainant's case was because other cases sometimes demanded greater urgency.

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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 (E.C.), the names of the complainant and the judge complained about are to remain confidential, except in special circumstances not present here.

<sup>2</sup>The magistrate judge issued a report and recommendation on July 29, 2014.

Complainant alleges the magistrate and district judges committed “extreme governmental misconduct” by failing to rule on complainant’s habeas petition. Complainant contends their delay “denied [complainant’s] right to be heard [and] access to the Courts,” and exhibited “extreme bias & prejudice.” Complainant claims that by prioritizing and addressing numerous other cases before complainant’s own, these judges “show[] unfairness and a lack of judicial impartiality.” Finally, complainant asserts both judges have conflicts of interest because (1) the magistrate judge was originally assigned to complainant’s case by another district judge (who has since recused) against whom complainant has filed a separate civil suit, and (2) the district judge has an unspecified “business relationship” with the attorney now claimed to have rendered ineffective assistance for complainant. Complainant requests recusal of both judges and “a transfer [of his judicial conduct complaints] to another circuit, to obtain fairness.”

Initially, I deny complainant’s request that his complaint proceedings be transferred to the judicial council of another circuit. Such a transfer is permitted at any stage of the complaint proceeding but should only be undertaken “[i]n exceptional circumstances.” Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 26. For example,

[s]uch transfers may be appropriate . . . in the case of a serious complaint where there are multiple disqualifications among the original council, where the issues are highly visible and a local disposition may weaken public confidence in the process, where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate, or where a complaint calls into question policies or governance of the home court of appeals.

Commentary on J.C.U.S. Rule 26. No “exceptional circumstances” are present here.

To the extent complainant alleges improper delay in ruling on complainant's habeas petition, the complaint must be dismissed because delay due to prioritization of cases is merits-related and is therefore not the proper subject of a judicial complaint. See 28 U.S.C. § 352(b)(1)(A)(ii); J.C.U.S. Rule 11(c)(1)(B); E.C. Rule 4(c)(2). "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." J.C.U.S. Rule 3(h)(3)(B). "Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding a particular case." Commentary on J.C.U.S. Rule 3.

To the extent complainant's allegations are based on claims of bias, prejudice, or conflicts of interests, complainant "lack[s] sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); see also J.C.U.S. Rules 11(c)(1)(D); E.C. Rule 4(c)(3).

Finally, the judicial complaint "request[s] recusal of" the magistrate and district judges, but such substantive action is outside the parameters of the judicial complaint process. See 28 U.S.C. § 352; J.C.U.S. Rules 3(h)(3)(A), 11.

The complaint is dismissed.

May 26, 2015

  
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William Jay Riley, Chief Judge  
Eighth Circuit