

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-14-90038

In re Complaint of John Doe¹

This is a judicial complaint filed on December 3, 2014, by an inmate and pro se civil litigant against the United States district court judge presiding over complainant's case. On December 16, 2011, complainant filed a petition for a writ of habeas corpus to which the government responded on June 14, 2012. During the next nine months, complainant filed at least five letters with the district court inquiring as to the status of his habeas case.

On October 3, 2013, complainant filed a new habeas petition which the judge deemed to be a motion for leave to amend the existing habeas petition, terminating the new case on November 25, 2013. The district judge granted the motion on March 13, 2014, a week after complainant filed a judicial complaint targeting the judge's delay in his case. See JCP No. 08-14-90003 (March 26, 2014). I dismissed that complaint on March 26, 2014, because complainant's allegations of delay did not constitute "cognizable misconduct" in the judicial complaint process, Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(3)(B), and there was insufficient evidence from which to infer an "improper motive," see 28 U.S.C. § 352(b)(1)(A)(iii); J.C.U.S. Rule 11(c)(1)(C), (D).

¹Under 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.

On June 11, 2014, complainant again filed a letter requesting a status update. No further activity occurred in complainant's case until, on December 3, 2014, the judge entered an order stating that complainant "has filed an Amended Petition for Writ of Habeas Corpus" and requiring the government to "file a status report within ten (10) days." The government complied, filing a response on December 15, 2014, explaining, "the current status of this case is that [complainant] has filed an amended motion which is under this Court's consideration to determine whether to issue a show cause order and no other action is pending in any other court related to this case." Although no response to the amended petition was requested, the government filed a response brief "[t]o avoid further delay in th[e] case." Since then, no additional activity has occurred on complainant's docket.

In this judicial complaint, complainant again criticizes the judge's delay in his case. He speculates the judge is "acting with the U.S. Government . . . to keep [complainant] imprisomen [sic] and delay [complainant's] right of open court to give the governor more time to put new charges on [complainant]." Complainant "ask[s] the court to rule on [his case] or give [him] a [sic] evidence hearing on his matter."

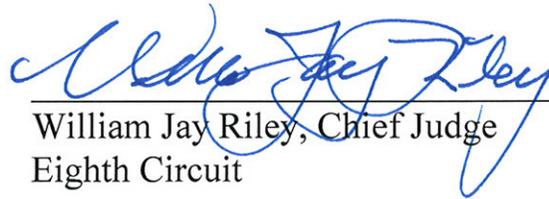
While complainant's frustrations are understandable, his complaint must be dismissed. "Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." J.C.U.S. Rule 3(h)(3)(B). "[A] complaint of delay in a single case is excluded as merits-related. 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." J.C.U.S., commentary on Rule 3(h)(3)(B).

Insofar as complainant alleges the judge's delay stems from some "improper motive," his complaint must be dismissed as "frivolous [and] lacking sufficient

evidence to raise an inference” of such a motive. 28 U.S.C. § 352(b)(1)(A)(iii); see J.C.U.S. Rule 11(c)(1)(C), (D); E.C. Rule 4(c)(3).

The complaint is dismissed.

January 22, 2015



William Jay Riley, Chief Judge
Eighth Circuit