

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

FILED

APR 4 - 2014

**MICHAEL GANS
CLERK OF COURT**

JCP No. 08-14-90003

In re Complaint of John Doe¹

This is a judicial complaint filed on March 5, 2014, by a state inmate against the United States district court judge presiding over the complainant's civil case. On December 16, 2011, the complainant filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the district court. On June 14, 2012, the state government filed its response. During the next nine months, the complainant filed at least five letters with the district court inquiring as to the status of the complainant's habeas case.

Perhaps because the case had not progressed, the complainant filed a second petition for a writ of habeas corpus with the district court on October 3, 2013. On November 25, 2013, the district judge issued an order stating the second petition was duplicative of the first. As a result, the district judge terminated the second case and ordered the clerk of court to file the second petition as a motion for leave to amend the first petition. The district judge granted the motion for leave to amend on March 13, 2014, a week after the complainant filed this judicial complaint. As of March 13, 2014, the district court docket showed the pending amended petition. As of the date of this opinion, no further action has been taken by the district judge in the complainant's case.

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

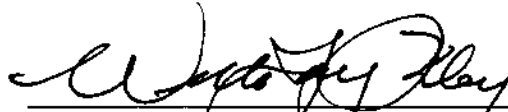
The complainant states the district judge denied the complainant “all rights to state habeas corpus” because of “acts of delay” and the lack of an evidentiary hearing on the petition. The complainant states the district judge is “acting with the state . . . to keep [the complainant] lock[ed] up [and not giving complainant’s] rights of open court.” The complainant also alleges the district judge is purposely giving “the Governor time to harass” the complainant and to “put new charges” on the complainant.

Although the complainant may raise legitimate issues about the delay in the complainant’s case, the judicial-complaint process is not the proper forum to resolve these issues. This complaint must be dismissed because alleged delay in rendering a decision or ruling in a particular case is not “conduct prejudicial to the effective and expeditious administration of the business of the courts” within the meaning of 28 U.S.C. § 351(a), the judicial complaint statute. This type of alleged delay is excluded as merits-related. See Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 3(h)(3)(B) (“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.”). The complainant alleges an “improper motive”; that is, the district judge is working in conjunction with the state and the governor to delay the complainant’s case. But these allegations of judicial misconduct are “frivolous [and] lacking sufficient evidence to raise an inference that misconduct has occurred.” 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).

Finally, the judicial complaint procedure is limited to United States judges and does not apply to any state actors. See 28 U.S.C. § 351(a), (d)(1); J.C.U.S. Rule 4; E.C. Rule 1(c). Thus, the complainant’s allegations of misconduct by the state, the governor, or any other non-judicial persons are not considered here.

The complaint is dismissed.

March 26, 2014



William Jay Riley, Chief Judge
Eighth Circuit