

**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT**

**FILED**

MAR 2 2015

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

<p><b>IN RE COMPLAINT OF JUDICIAL MISCONDUCT</b></p>
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No. 14-90112

**ORDER**

**THOMAS**, Chief Judge:

Complainant alleges that a magistrate judge improperly delayed issuing a report and recommendation in his habeas case. Any allegation of delay is not cognizable as misconduct “unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Judicial-Conduct Rule 3(h)(3)(B). Because complainant does not provide evidence of either improper motive or habitual delay, this allegation must be dismissed as unsupported. See Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009); see also 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the judge should have recused himself. Allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. 2009).

**DISMISSED.**