

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-2535

In Re: ELIZABETH HOUSE JANES,

Petitioner,

On Petition for Writ of Mandamus
(CA-04-275; CR-01-231)

Submitted: February 9, 2005

Decided: February 14, 2005

Before WILKINSON, MICHAEL, and SHEDD, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Elizabeth House Janes, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Elizabeth House Janes petitions for writ of mandamus. She seeks an order directing the district court to act on her motion for recusal of Judge Raymond A. Jackson, which she alleges she filed on or about June 6, 2004.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. See In re First Fed. Sav. & Loan Assn., 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

The district court has no record of receiving a motion for recusal of Judge Jackson from Janes. Although the court received a motion for recusal from her codefendant on May 6, 2004, Janes did not join in the motion. Janes, therefore, lacks standing to challenge the district court's inaction on it.

Janes has also submitted a copy of a motion for recusal of the Assistant United States Attorney she alleges she submitted on June 25, 2004. The district court has no record of receiving Janes's motion, and Janes has not demonstrated it was properly filed. The district court did receive a "renewed" motion for the recusal of the Assistant United States Attorney on December 1,

2004. We conclude, however, that the district court has not unduly delayed ruling on this motion.

Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED