

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90047
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner and frequent litigant against the district judge who dismissed six of the complainant's 42 U.S.C. § 1983 complaints that the complainant has filed since 2010. The complainant argues that the subject judge "has repeatedly demonstrated bias, prejudice and what appears to be a mental incapacity in his decisions." He points specifically to an order in his most recently dismissed § 1983 case, in which the subject judge denied a discovery request because the complainant had not made a sufficient showing of need. This order, according to the complainant, "totally ignored the underlying facts." The complainant notes in conclusion that "[i]t is ridiculous that it has taken four (4) years to resolve these cases" that were pending at the time he submitted his complaint.

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, "is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office"; (B) that the complaint "is directly related to the merits of a decision or procedural ruling"; (C) that the complaint is "frivolous," a term that applies to charges that are wholly unsupported; or (D) that the complaint "lack[s] sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The gravamen of the complaint is the complainant's dissatisfaction with the conduct of his underlying proceedings. The decisions of a judge in an underlying action are not the proper subject of a complaint of judicial misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council is not a court and has no jurisdiction to review the named judge's rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). This complaint is therefore appropriately dismissed pursuant to 28 U.S.C.

§ 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent the complaint alleges improper delay, those allegations are likewise subject to summary dismissal. Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process pursuant to Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not shown and cannot show unreasonable or persistent delays, nor has he alleged an improper motive. Therefore, the complaint will also be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(B) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ R. Guy Cole, Jr.
Chief Judge

Date: October 15, 2014