

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90084
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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 litigant against the circuit judge who, as chief judge of the circuit, dismissed the complainant's judicial-misconduct complaint against the district judge who presided over the complainant's civil action. The main thrust of the complaint is that the circuit judge did not expeditiously review the judicial-misconduct complaint against the district judge. The complainant also alleges that the circuit judge failed to review the evidence and address the merits of the complainant's underlying civil claim. Much of the complaint consists of facts and arguments relating to that claim.

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.

Unless it concerns an improper motive or habitual delay in a significant number of unrelated cases, an allegation of delay in rendering a decision is outside the scope of judicial-misconduct proceedings. See Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complainant has not alleged any improper motive or habitual delay. Therefore, to the extent that it is based on an allegation that the circuit judge delayed the decision on the complainant's prior judicial-misconduct complaint, this complaint is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii).

The remainder of this complaint is subject to dismissal under Rule 11(c)(1)(B) because it is directly related to the merits of the circuit judge's disposition of the prior judicial-misconduct complaint. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). A complainant who is dissatisfied with the chief judge's disposition of a complaint under Rule 11(c) may petition for review by the judicial council. See 28 U.S.C. § 352(c); Rule 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Review is not available by means of a new complaint against the chief judge. Nor is this the appropriate forum for review of the merits of the complainant's underlying civil claim.

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

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

Date: November 26, 2014