

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90107/108
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a prisoner against the district judge and magistrate judge before whom his motion to vacate sentence pursuant to 28 U.S.C. § 2255 is currently pending. He complains that none of the motions that he filed in that case have been responded to, and that, as a result, he is being denied due process and equal protection of the law.

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.

Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings specifically provides that a delay in making a ruling or decision, without more, does not constitute misconduct cognizable in the judicial complaint process. It has long been the rule in this circuit that, absent a showing of unreasonable or persistent delay in handling litigation, the judicial complaint procedure is not intended to be used to force a ruling on a particular motion or matter alleged to be pending before a judge for an excessive period. See Rule 1(e), Rules Governing Complaints of Judicial Misconduct or Disability. Review of the district court record reveals that complainant cannot make a showing of anything more than routine delay in his underlying case.

This complaint is therefore subject to dismissal as “lacking sufficient evidence to raise an inference that misconduct has occurred” 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.

Accordingly, the complaint will be dismissed as unsupported by sufficient evidence pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) & 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: January 20, 2016