

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-14-90051/52
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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 against the district and magistrate judges to whom the complainant's 42 U.S.C. § 1983 action was assigned. He charges that the subject judges deliberately delayed those proceedings, alleging that "upon [his] complaint being approved 12/3/12, multiple documents were filed by [himself] and counsel for defense for almost a year, with not one ruling." He also complains about the subject magistrate judge's order denying his motion to expedite and contends that the subject district judge never responded to his multiple objections to that order. In further support of his deliberate-delay allegations, the complainant points to two recently filed cases that are currently pending before the subject judges "with not one address to the Docket."

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.

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. Moreover, his factual allegations are belied by the docket sheet he submitted, which shows judicial action in the period during which he contends the

subject judges did nothing, and shows that the subject district judge denied all of his pending motions and overruled all of his outstanding objections. With respect to the two currently pending cases that he cites as further evidence of delay, he is not a party to one, and the other was summarily dismissed a little more than two months after it was filed. Because he does not show any unusual delay in the progress of his cases, much less improper or habitual delay, his complaint is subject to summary dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent the complainant challenges the subject magistrate judge's denial of his motion to expedite, that part of the complaint is appropriately dismissed as merits related under 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.

For these reasons, this 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