

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90125
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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 judge who is currently presiding over a 42 U.S.C. § 1983 action that was jointly filed by 134 inmates. The complainant argues that the subject judge “committ[ed] the act of Official Oppression/misconduct,” because he has not yet “made a ruling under 28 U.S.C. Sec. 1915A . . . nor has he ordered the complaint be se[r]ved upon the defendants.” The complaint of judicial misconduct was submitted less than two months after the § 1983 complaint was filed.

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.

This complaint is 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. 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), Sixth Circuit Rules Governing Complaints of Judicial Misconduct or Disability. 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. Review of the district court record reveals that complainant cannot show delay of any character in his underlying case.

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 21, 2015