

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-15-90018/22
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M E M O R A N D U M

These complaints of judicial misconduct were filed by a pro se prisoner against a district judge who was assigned to two of his civil-rights actions and another district judge who was assigned to a third action brought by the complainant. The complaint in No. 06-15-90018 alleges that the subject judge has refused to appoint counsel, refused to assist in the identification of defendants, and refused to “answer” the complainant’s motions. A supplement to this complaint alleges that the judge should have recused himself from the second action assigned to him in light of the pending misconduct complaint. The complaint in No. 06-15-90022 alleges that the subject judge “refuses to rule on motions.”

After conducting an initial review, the chief judge may dismiss a misconduct 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”; (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.

A review of the district-court record reveals that the complainant, proceeding pro se and in forma pauperis, sued a police department and a police detective under 42 U.S.C. § 1983. On initial review under 28 U.S.C. § 1915, the assigned district judge dismissed the claims against the police department, allowed the claims against the detective to proceed, and denied the complainant’s motion for appointment of counsel. The complainant has pending motions to compel discovery and for issuance of subpoenas, but he has not yet served the remaining defendant.

In a separate action, the complainant sued the State of Tennessee, a state-court judge, a public defender, and a court clerk under § 1983. The subject judge dismissed the action for failure to state a claim upon which relief could be granted.

In a third § 1983 action, the complainant sued a sheriff and two medical service providers. The assigned district judge dismissed all claims, and the complainant filed a notice of appeal. The judge granted the complainant 30 days within which to pay the appellate filing fee or file the appropriate papers seeking pauper status. The complainant filed two motions to extend that 30-day period. The judge denied those motions as moot upon entry of an order assessing the appellate filing fee under 28 U.S.C. § 1915(b).

To the extent that they challenge the merits of the subject judges' rulings, including a failure to recuse, these complaints are subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's decision is outside the scope of judicial-misconduct proceedings. 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 any ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

To the extent that the complaints allege undue delay in ruling on motions, they are subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a delay in making a ruling or decision does not constitute misconduct absent a showing of improper motive or habitual delay. The complainant has made no such showing.

For these reasons, the complaints 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: June 29, 2015