

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90052
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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 was assigned to his civil action filed under the Americans with Disabilities Act (“ADA”). The complaint alleges that the district judge “froze” the service of process but informally notified the defendants of the lawsuit. A supplement to the complaint alleges that the district judge has delayed ruling on a motion for a preliminary injunction.

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 filed his ADA complaint, summonses, and service-of-process forms in March 2015. In April, he filed a motion for a preliminary injunction. In September, the defendants were served with process, and the district judge ordered them to respond to the motion for a preliminary injunction. The defendants filed their response in October. The case remains pending.

This complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). There is nothing in the record to suggest that the district judge “froze” the service of process or informally notified the defendants of the lawsuit. Nor does the district judge’s handling of the complainant’s preliminary-injunction motion support an inference of misconduct. Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a delay in making a ruling does not constitute misconduct absent a showing of improper motive or habitual delay. On the

record presented here, the complainant cannot make a showing of anything more than routine delay.

For these reasons, the complaint will be dismissed 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.

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

Date: November 10, 2015