

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-16-
*90115/116/117
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complainant argues that the subject judges, sitting as a panel, delayed their ruling on his motion for authorization to file a second or successive habeas petition pursuant to § 2244(b), despite § 2244(d)’s requirement that such a motion be decided within 30 days.

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.

An examination of the docket sheet under the case number listed on the complaint form reveals that the named subject judges heard and denied a petition for a writ of mandamus, rather than a motion for authorization to file a second or successive habeas corpus petition. Because the factual allegations made against the named subject judges are refuted by the record, the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred,” Rule 11(c)(1)(D), and will be dismissed as to those named judges.

A different panel of circuit judges, however, did deny a motion for authorization to file a second or successive habeas corpus petition filed by the complainant. Although those judges were not named in the complaint, the chief judge may, even in the absence of formal allegations, identify a complaint if he or she has probable cause to believe that misconduct has occurred or that a disability exists. See Rule 5, Rules for Judicial-Conduct

and Judicial-Disability Proceedings. Because 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, and the 30-day requirement in 28 U.S.C. § 2244(d) is not mandatory, see *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997), *abrogated on other grounds by Bousley v. United States*, 523 U.S. 614 (1998), the undersigned declines to identify a complaint against those judges.

Accordingly, it is **ORDERED** that the complaint 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: July 5, 2017