

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90118
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judge “is deliberately delaying the adjudication of a motion to dismiss” for the purpose of “enabling . . . interference” with the complainant’s employment opportunities.

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; see 28 U.S.C. § 352(a), (b).

An initial review of the record reveals that the complainant filed a civil action on February 28, 2017. The case was referred to the subject judge for pretrial matters. The defendant filed a motion to dismiss, which was fully briefed as of May 4, 2017. The complainant filed this misconduct complaint on October 23, 2017, alleging deliberate delay in the subject judge’s preparation of a report and recommendation with respect to disposition of the pending motion.

This complaint is subject to dismissal under Rule 11(c)(1)(D) as “lacking sufficient evidence to raise an inference that misconduct has occurred.” See *also* 28 U.S.C. § 352(b)(1)(A)(iii). Review of the record reveals that there has not been inordinate delay in adjudication of the pending motion to dismiss. The complainant’s allegation that her case has been pending longer than the median time for disposition of civil cases “before pretrial” does not, without more, raise an inference of misconduct.

Moreover, the complainant's speculative allegation as to the motive of the subject judge is subject to dismissal under Rule 11(c)(1)(C) as entirely unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complainant states that she has "reasonably deduced" the subject judge's motive, but no facts in the record support a deduction that the subject judge is delaying adjudication of the case in order to impair the complainant's employment opportunities.

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)(C) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: March 29, 2018