

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90016
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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, acting out of bias against prisoner litigants, has delayed the progress of the complainant’s civil-rights action. Alternatively, the complaint alleges that the delay is attributable to an impairment of the subject judge’s judgment and reasoning. The complaint also suggests that the subject judge has conspired with the defendants in the civil rights action so as to deny the complainant relief.

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 in late September of 2017 the complainant filed a civil rights action, a motion for preliminary injunction, and a motion for leave to proceed in forma pauperis. A magistrate judge granted the complainant’s motion for leave to proceed in forma pauperis in January of 2018. The subject judge then reviewed the action in accordance with the Prison Litigation Reform Act and, in April of 2018, dismissed the claims against several defendants, ordered service of the complaint on the remaining defendants, and denied the complainant’s motion for a preliminary injunction.

The central allegation of this judicial-misconduct complaint is that the subject judge has unduly delayed the progress of the complainant’s civil-rights action. An

allegation of delay on the part of a subject judge does not allege cognizable misconduct unless the allegation concerns an improper motive or habitual delay in a significant number of cases. Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complainant here asserts generally that the subject judge has an improper motive—bias—and engages in habitual delay, but he has not alleged any specific facts demonstrating bias or delay in a significant number of cases. The complaint is thus subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. *See also* 28 U.S.C. § 352(b)(1)(A)(iii).

In any event, the record does not reflect undue delay on the part of the subject judge. For that reason, and because the allegations of bias, disability, and conspiracy are entirely unsupported by the record, the complaint is also subject to dismissal under Rule 11(c)(1)(C). *See also* 28 U.S.C. § 352(b)(1)(A)(iii).

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

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

Date: September 10, 2018