JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

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In re:	*
Complaint of Judicial Misconduct	*Nos. 06-18-
	*90025/26/27
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** ("complainant") against the Honorable **[REDACTED]**, the Honorable **[REDACTED]**, and the Honorable **[REDACTED]** (subject judges), pursuant to 28 U.S.C. § 351. The subject judges are the district court judge and magistrate judge to whom the complainant's pending civil case is assigned, and the chief judge of the district in which that case is pending. The complainant argues that the subject judges have "caused significant procedural delays on [his] case." He also seems to be challenging a particular ruling in that case, which he characterizes as a sua sponte dismissal before service.

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.

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. The complainant has not alleged improper motive or habitual delay. And an examination of the docket report shows that the case was pending less than nine months when this complaint was filed. Because the complainant cannot show any undue delay, much less improperly motivated or habitual delay, this part of his complaint is due to be dismissed as unsupported by sufficient evidence, 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.

The complainant seems to be also arguing that he does not have or was not notified of the issuance or provided a copy of the magistrate judge's report and recommendation. He instead received, he alleges, "a decision on the same day it was filed to *sua sponte* dismissal (sic) on the merits," which, he contends, violated clear Sixth Circuit precedent. It is not entirely clear what the complainant is alleging here, other than his own confusion. The record shows that the complainant objected to the magistrate judge's report and that his objections specifically addressed the recommendation that his action be dismissed as untimely under the applicable statute of limitations. Even if he could establish that he had been served with the wrong document, he has not alleged nor could show that the subject judges were responsible for the clerical error or that such an error could ever be cognizable misconduct under the Rules for Judicial-Conduct and Judicial-Disability Proceedings. *See* Rule 3(h)(1). Because the complainant has thus not alleged conduct that, even if true, was "prejudicial to the effective and expeditious administration of the business of the courts," this part of the complaint is due to be dismissed pursuant to Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

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

Date: September 10, 2018