

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90058
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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 has delayed the adjudication of the complainant’s habeas corpus petition, in violation of federal law and his constitutional rights.

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, a federal prisoner, filed a petition for a writ of habeas corpus in December 2016. The case was assigned to the subject judge, who denied the complainant’s motion to expedite (but ordered the government to respond to the petition within sixty days). In March 2017, the complainant moved to supplement his petition; the subject judge granted that motion in part in September 2017. In January 2018, the complainant moved to transfer the case. At the time of the filing of this misconduct complaint, that motion remained pending. Thereafter, the subject judge denied the motion.

The chief allegation of this judicial-conduct complaint is that the subject judge has unduly delayed adjudication of the complainant’s habeas corpus petition. 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 complaint here does not allege an improper motive or habitual delay. 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).

To the extent that it alleges error in the subject judge's order denying the complainant's motion to expedite, the complaint is also subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of that order. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's ruling is outside the scope of judicial-misconduct proceedings. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council is not a court and has no jurisdiction to review any decision by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(A) & (B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: November 5, 2018