

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90100
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against [REDACTED] (“subject judge”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judge delays ruling in prisoner civil rights actions because of bias against prisoners.

The complainant filed a similar complaint, No. 06-18-90016, against a different judge, and the chief judge of this circuit dismissed it. Although the current complaint does not name the chief judge as a subject judge, it alleges that he dismissed the prior complaint “illegally” so as to “protect the illegal actions” of subject judges. For that reason, this matter was referred to the undersigned pursuant to 28 U.S.C. § 351(c).

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 prisoner, filed a civil action that was assigned to the subject judge. Less than four months after the case was filed, the subject judge denied the complainant’s motion for leave to proceed in forma pauperis. The complainant moved for reconsideration, and the subject judge granted the motion, approximately five months after the case was filed.

As was the case in No. 06-18-90016, the central allegation of this 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 that the subject judge has an improper motive—bias against prisoners—and engages in habitual delay of prisoner cases, 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 allegation of bias is 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.

Entered as Chief Judge
Pursuant to 28 U.S.C. § 351(c)

/s Karen Nelson Moore

Date: April 23, 2021