

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

In re:  
Complaint of Judicial Misconduct

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\*Nos. 06-18-90122/123  
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**MEMORANDUM AND ORDER**

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complaint alleges that one subject judge failed to promptly adjudicate motions in the complainant’s civil action and that the eventual adjudications were unjust. The complaint also suggests that this judge is partial and might have engaged in ex parte communications with the defendants in the action. Finally, the complaint alleges that the other subject judge, in her capacity as chief district judge, failed to correct the alleged misconduct.

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 that was assigned to one of the subject judges. The docket reflects that the complainant served one of the two named defendants. The unserved defendant filed a motion for a more definite statement, to which the judge ordered a response. The other defendant moved for an extension of the time to answer and then, two months later, a second such motion. Meanwhile, the unserved defendant and the complainant completed briefing of the motion for a more definite statement, and the complainant moved for entry of a default judgment. The judge then issued orders granting the motion for an extension of time, denying the motion for a default judgment, and granting the motion for a more definite statement. These orders were entered a little over four months after the first motion was filed.

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 credibly allege an improper motive or habitual delay. With respect to the allegation of delay, therefore, the complaint is 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.

To the extent that this judicial-misconduct complaint is based on the alleged injustice of one subject judge's orders, it is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of those orders. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's rulings 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).

To the extent that the complaint is based on alleged partiality and ex parte communication, it is subject to dismissal under Rule 11(c)(1)(C) because the allegations are entirely unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, in the absence of any cognizable misconduct on the part of the subject judge to whom the complainant's civil action was assigned, the allegation that the other subject judge failed to correct misconduct is likewise subject to dismissal.

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

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

Date: July 25, 2019