

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

In re:
Complaint of Judicial Misconduct

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*No. 06-19-90038
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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 is biased and has delayed the complainant’s civil action to favor the defendants.

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 the subject judge. On initial screening, the subject judge dismissed the action. The court of appeals vacated the judgment in part and remanded for further proceedings on two of the complainant’s claims. About four months later, the complainant moved for an order directing the U.S. Marshal to serve the defendants. The complainant filed this complaint about six months after that, when no action had yet been taken on his motion. Since then, the U.S. Marshal served the defendants, and the case is proceeding.

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 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complainant here alleges that the subject judge has an improper motive—bias. But the allegation of bias is not supported by any specific facts or evidence in the record. The complaint is thus subject to dismissal under Rule

11(c)(1)(C) as wholly unsupported by the record. 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)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: February 18, 2020