

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-19-
*90092/93/94
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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 the subject judges have delayed adjudication of the complainant’s habeas corpus petition because of his poverty, in violation of his constitutional rights.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct 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 habeas corpus petition in 2010. The case was assigned to subject judge #1, who granted the respondent’s motion to stay the proceeding pending exhaustion of state-court remedies. The judge granted the complainant’s motion to reopen the case in April of 2014, and briefing was completed in July of that year. In March of 2017, the case was reassigned to subject judge #2. In November of 2018, it was reassigned to subject judge #3.

This misconduct complaint alleges that the subject judges have delayed adjudication of the complainant’s habeas corpus petition because he is indigent. Delay in rendering a decision constitutes cognizable misconduct if it has an improper motive, such as discrimination against indigent litigants. See Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Absent an improper motive, delay in adjudicating a single case does not constitute cognizable misconduct. See *id.*

The complaint's allegations of improperly motivated delay are subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). Although the record reflects substantial unexplained delay in the adjudication of the complainant's habeas corpus petition, it does not contain sufficient evidence to support an inference that the complainant's poverty is the reason for the delay.

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

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

Date: November 13, 2020