

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-19-90098/099/
*100/101/102/103/104/
*105/106/107
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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 violated a statute, 28 U.S.C. § 2244(b)(3)(D), by failing to adjudicate within 30 days the complainant’s motions for authorization of a second or successive motion to vacate his sentence.

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 five motions for authorization of a second or successive motion to vacate his sentence under 28 U.S.C. § 2255. Each of these motions was denied by a panel comprising one or more of the subject judges.

Whether construed as alleging delay or legal error in the denial of the complainant’s motions for authorization, the complaint fails to allege cognizable misconduct. Delay in rendering a decision can constitute cognizable misconduct only if

it has an improper motive or if it occurs habitually in a significant number of unrelated cases. See Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. And any challenge to the correctness of a judge's ruling is also outside the scope of judicial-misconduct proceedings. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, the 30-day deadline to which the complaint refers "is hortatory or advisory rather than mandatory." *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) 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 13, 2020