

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90044
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the magistrate judge who was assigned to his habeas corpus proceeding. The complaint alleges that the magistrate judge ignored the habeas respondent's waiver of defenses, improperly struck the complainant's motion for summary judgment, and improperly denied the complainant's motion for release.

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.

A review of the district-court record reveals that the habeas respondent moved to dismiss the complainant's habeas petition in June 2014. The complainant opposed that motion and moved for judgment on the pleadings, arguing that the respondent had waived all defenses to the habeas petition and had agreed, by not responding to certain communications from the complainant, that he was entitled to habeas relief.

In January 2015, the habeas proceeding was transferred to the magistrate judge who is the subject of this complaint. The magistrate judge recommended that the complainant's motion for judgment on the pleadings be denied and that the proceeding be stayed so that the complainant could exhaust state-court remedies. The district court adopted these recommendations in March 2015.

The complainant filed a motion for summary judgment while the case was stayed, and the magistrate judge struck the motion as unauthorized and premature.

The complainant moved for release, and the magistrate judge denied that motion as well. The district judge upheld the magistrate judge's rulings.

This complaint is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the magistrate judge's rulings. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's decisions 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 ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988). Jurisdiction to review the magistrate judge's rulings lies with the district judge, who has indeed reviewed the rulings complained of here.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: August 28, 2015