

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-15-90086
*
*
*
*

M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the district judge who was assigned to his federal habeas proceeding. The complaint alleges that the district judge conspired with the court clerk to suppress the complainant's 28 U.S.C. § 2241 petition by docketing it as an amendment to his already pending § 2241 petition, rather than as a new petition, and then dismissing the first petition without considering the claims raised in the second.

After conducting an initial review, the chief judge may dismiss a 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 and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office"; (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.

An initial review of the district-court record reveals that the complainant filed a § 2241 petition in January 2015. In February, the complainant filed another § 2241 petition, which the court clerk mistakenly docketed as an amendment to the January petition. The complainant moved for correction of that error, but the district judge denied that motion and dismissed the action. The complainant then moved for reconsideration. After this judicial-conduct complaint was filed, the district judge granted that motion in part, ordered that the February § 2241 petition be re-docketed as a new action, and adhered to its disposition of the January petition.

This complaint is subject to dismissal, in part, on the ground that it is directly related to the merits of the district judge's rulings. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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.

To the extent that the complaint alleges conspiracy or other misconduct unrelated to the district judge's rulings, it is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). There is no evidence that the district judge had any involvement in the erroneous docketing of the complainant's second petition, nor that the mis-docketing was anything other than an honest mistake (which the district judge eventually corrected).

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

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

Date: November 10, 2015