

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90092/93
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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 district judge and magistrate judge who were assigned to his habeas corpus proceeding filed under 28 U.S.C. § 2254. The complaint alleges that the magistrate judge improperly denied the complainant's motion for a stay, and that the district judge improperly affirmed that denial, on the basis of the magistrate judge's false statement that the complainant had no motion for relief pending in state court. According to the complainant, the judges' conduct demonstrates bias and prejudice and is contrary to the Fourteenth Amendment.

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 moved to stay his habeas proceeding so that he could exhaust his claims in state court. The magistrate judge denied the motion, stating that the complainant had no motion for relief pending in state court and that no additional state court procedure remained available to him. The magistrate judge then recommended denial of the complainant's habeas petition on the grounds that some claims were procedurally defaulted and the others were without merit. The district judge affirmed the denial of the stay motion, adopted the magistrate judge's recommendations, and denied the petition.

The complaint is subject to dismissal on the ground that it is directly related to the merits of the subject judges' decisions. 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 rulings 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 bias, prejudice, and unconstitutional action, 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 supporting such allegations.

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: January 20, 2016