

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90124
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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 who presided over his habeas corpus proceeding. The complaint alleges that the district judge “fabricated evidence and law” in order to rule against the complainant on his claim that he did not receive a hearing on his competence to stand trial. The complaint also alleges that the district judge might have “engaged in ex parte communications,” that the judge failed to rule on various motions, and that the judge improperly denied a post-judgment motion to compel production of state-court records.

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.

An initial review of the district-court record reveals that the complainant’s habeas corpus petition raised several claims based on the state trial court’s alleged failure to conduct a hearing on his competence. These claims presented a factual question as to whether such a hearing had occurred. The district judge deferred to the state court’s determination on that question after examining the record and concluding that it did not sufficiently rebut the presumption of correctness accorded to state-court factual determinations. See 28 U.S.C. § 2254(e)(1).

The complaint’s allegations that the district judge “fabricated evidence and law” are, at their essence, challenges to the judge’s decision to defer to the state court’s factual finding and to deny habeas relief on that basis. To the extent that it makes these allegations and challenges the district judge’s other rulings, including the denial of the

post-judgment motion to compel and the implicit denial of motions that were not explicitly addressed, the complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). A challenge to the merits of the district judge's rulings is outside the scope of judicial-misconduct and judicial-disability 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).

To the extent that it alleges improper *ex parte* communications by the district judge, the complaint is subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complaint sets forth no specific facts, and the record contains no evidence, to support such allegations.

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

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

Date: January 21, 2015