

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90070
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judge “bit [his] head off” during a telephone conference, accused him of delay, and stated that no extensions of time would be granted. The complainant further alleges that the subject judge is biased against him and has prejudged his case.

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; see 28 U.S.C. § 352(a), (b).

An initial review of the record reveals that the complainant, a prisoner on death row, filed a petition for a writ of habeas corpus that was assigned to the subject judge. In 2005, the subject judge granted the complainant’s motion to stay the habeas case pending the completion of post-conviction proceedings in state court. While the case was stayed, the complainant filed several pro se motions for withdrawal of his appointed attorneys and for dismissal of his petition; these motions were withdrawn or denied as moot after the complainant stated that he was satisfied with his attorneys and wished to continue pursuing habeas relief. In 2016, the district court lifted the stay, and the complainant filed an amended habeas petition. On September 1, 2016, the subject judge held a conference in which the complainant participated by telephone. Thereafter, the subject judge granted the complainant’s oral request for appointment of new counsel.

The misconduct complaint's allegations about the subject judge's statements and tone in the September 1, 2016, telephone conference are subject to dismissal under Rule 11(c)(1)(A) because the alleged conduct is not prejudicial to the effective and expeditious administration of the business of the courts. The allegations do not establish that the subject judge treated the complainant "in a demonstrably egregious and hostile manner" constituting cognizable misconduct. Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, to the extent that it alleges bias and prejudice on the part of the subject judge, the complaint is wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). *See also* 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(A) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: March 14, 2017