

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90087
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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 complaint alleges that the subject judge conspired with the United States Attorney’s Office and the Federal Public Defender to keep the complainant detained while preventing his trial on criminal charges. In furtherance of this conspiracy, the complaint alleges, the subject judge violated the complainant’s constitutional rights before, during, and after two competency hearings, denied the complainant his right to conflict-free counsel, and pressured a psychologist to change her evaluation of the complainant’s competence. This matter was referred to the undersigned pursuant to 28 U.S.C. § 351(c).

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct as to which he concludes: (A) that the claimed conduct “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’s criminal case was assigned to the subject judge, who referred the complainant to the Bureau of Prisons (BOP) for an evaluation of his competence to stand trial. After a hearing, the subject judge found that the complainant was not competent and referred him to the BOP for a determination of whether he could be restored to competence. A psychologist prepared a report concluding that the complainant was competent, but the subject judge expressed doubts based on his own observations of the complainant’s conduct. After the filing of this misconduct complaint, the subject judge held another competency hearing, found that the complainant remained incompetent to stand trial, and dismissed the charges against him. The court of appeals affirmed that decision.

Most of the allegations in this misconduct complaint relate directly to the merits of the subject judge's rulings on procedural and substantive matters, including the subject judge's refusal to dismiss appointed counsel, referral of the complainant for psychiatric evaluation and treatment, and determination that the complainant was, and later remained, incompetent. To that extent, the complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's rulings is outside the scope of judicial-misconduct proceedings. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council is not a court and has no jurisdiction to review any decision by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

To the extent that the complaint contains allegations that do not relate to the merits of the subject judge's rulings, such as allegations of conspiracy and of an unsuccessful attempt to coerce a psychologist to alter her competency evaluation, it is subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). Nothing in the record supports those allegations. The complainant asserts that the psychologist told him "she was being pressured and coerced" by the subject judge to change her evaluation, that the psychologist retained an attorney at the complainant's suggestion, and that the attorney threatened a lawsuit against the government, causing the government to give the psychologist "a huge promotion" and "a huge increase in salary" in exchange for her silence. These allegations "are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted," especially when considered in the context of the conduct and statements that led to subject judge to find the complainant incompetent. Commentary, Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see *United States v. Bergrin*, 885 F.3d 416, 418-19, 421 (6th Cir. 2018).

Accordingly, it is **ORDERED** that the complaint 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.

Entered as Chief Judge
Pursuant to 28 U.S.C. § 351(c)

/s/ Karen Nelson Moore

Date: April 23, 2021