

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-17-90014/15
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judges improperly denied his motions for a default judgment and for discovery in his habeas corpus proceeding. The complainant also alleges that the subject magistrate judge should have recused herself and that the subject judges conspired with a state prosecutor to deny relief. The complainant seeks release from imprisonment.

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 subject judges were assigned to the complainant’s habeas corpus proceeding. After the respondent answered, the complainant replied and moved for a default judgment, arguing that the respondent’s answer did not comply with the governing rules. The subject magistrate judge recommended denial of the motion for a default judgment, and the subject district judge adopted that recommendation over the complainant’s objections. The subject district judge also denied the complainant’s discovery motions. Ultimately, the magistrate judge recommended dismissal of the petition. The district judge adopted that recommendation as well, rejecting the complainant’s argument that the magistrate judge was biased and should have been recused from the case.

Most of the allegations of this judicial-misconduct complaint are directly related to the merits of the subject judges’ rulings in the habeas corpus proceeding. 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 judges' rulings is outside the scope of judicial-misconduct 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 decision by a judge or panel of judges. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988). Nor can the Judicial Council order the relief requested here, the complainant's release from prison.

To the extent that the complaint alleges conspiracy on the part of the subject judges, it is subject to dismissal under Rule 11(c)(1)(C) as wholly unsupported by the record. See also 28 U.S.C. § 352(b)(1)(A)(iii).

For these reasons, 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.

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

Date: August 4, 2017