

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-17-90045/46
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MEMORANDUM AND ORDER

These complaints of judicial misconduct were filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge”), pursuant to 28 U.S.C. § 351. Both complaints challenge the subject judge’s order denying the complainant’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. The complainant takes particular offense at language in the order that referred to his habeas petition as “a 205-page maze of fragmented arguments” that was “difficult to parse” and which was not clarified by complainant’s multiple amendments and briefs. Complainant speculates that the subject judge did not read or was incapable of reading the petition. He also suggests that his inability to write clearly was a disability that the subject judge should have accommodated.

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.

The gravamen of his complaints are the complainant’s dissatisfaction with the denial of his habeas petition. Judicial rulings in underlying proceedings are not the proper subject of a complaint of judicial misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. These complaints are therefore subject to dismissal as directly related to the merits of judicial decisions made in the underlying proceedings, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. And the complainant may not avoid this stricture by couching his challenge to such rulings as

misconduct on the part of the subject judge. With respect to complainant's allegation that the subject judge did not read the petition and accompanying pleadings, it should be noted that the judge's final order was 29 pages long and addressed on the merits each issue that the complainant raised. Whether or not the complainant's deficient writing skills constituted a disability that the subject judge was bound to accommodate, it is abundantly clear from the judge's order that he afforded the complainant a thorough review and a liberal interpretation of all pleadings filed. Even if the complainant was not using these allegations as a transparent attempt to challenge the order denying his habeas petition, the allegations would be independently dismissed as frivolous, as they are either unsupported or belied by the evidence. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, it is **ORDERED** that the complaints 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: September 25, 2017