

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90090
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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 refused to read or consider his pleadings, unduly delayed resolution of his habeas corpus petition, and erroneously denied his motion for sanctions.

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 judge was assigned to the complainant's habeas corpus petition. The subject judge entered an order that denied several of the complainant's motions, including a motion to supplement the complainant's reply to the respondent's answer and a motion for sanctions. In denying the motion to supplement, the subject judge observed that the complainant had had 10 months to prepare his reply and that the proffered reply did not appear to be materially different from the originally filed reply.

The record thus demonstrates that the subject judge did not refuse to read or consider the complainant's pleadings. The judge merely determined that there was no good basis to allow supplementation of the complainant's reply. To the extent that the complainant challenges the merits of that determination, this misconduct 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 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). For the same reason, the portion of this complaint that challenges the denial of the motion for sanctions is subject to dismissal.

To the extent that the complainant's challenge to the subject judge's rulings is not merits-based, this 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). In particular, the allegations of bias and "acting as an attorney" find no support in the record.

Finally, the complainant's allegations of undue delay are subject to dismissal for the reasons set forth in the Memorandum and Order dismissing the same allegations in complaint No. 06-16-90047.

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) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: January 17, 2018