

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-17-
*90125/126/127/128
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]**, the Honorable **[REDACTED]**, and the Honorable **[REDACTED]**, and the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. This complaint brings the total number of grievances against federal judges to seven.

The subject district judge presided over and ultimately dismissed the complainant’s combined petition for a writ of habeas corpus under 28 U.S.C. § 2254 and civil rights complaint under 42 U.S.C. § 1983. The subject circuit judges sat together on a panel that denied the complainant’s writ of mandamus arising from the underlying proceedings before the subject district judge. The complaint against them consists of a detailed history of the underlying proceedings.

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).

The only discernable challenges to the subject district judge’s conduct are a vague allegation of delay in issuing rulings and an allegation that the subject district judge conspired with department of corrections officials to deny the complainant mail, phone calls, and visits, and to cover up that he was innocent, that medical personnel injected him with Hepatitis C, and that the department of corrections arbitrarily changed his prison sentence (which tracks the allegations in his underlying habeas petition and § 1983 complaint). His only allegation against the subject circuit judges is that they

wrongfully denied his petition for a writ of mandamus without a reply from the respondent.

Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process, pursuant to Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not alleged improper motive or habitual delay, and an examination of the docket sheet shows that the subject district judge issued timely rulings and moved the case along expeditiously from the time it was filed until the time she recused herself. Because the complainant thus cannot show any delay, much less improper delay, his complaint is due to be dismissed as unsupported by sufficient evidence, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complaint's allegations of conspiracy between the subject judge and the department of corrections are wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). See also 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant's allegation against the subject circuit judges is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the judges' ruling on the underlying petition for a writ of mandamus. 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. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988). In any event, under Federal Rule of Appellate Procedure 21(b)(1), a reply to a mandamus petition is at the court's invitation, and the court may deny the petition without ordering a response.

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

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

Date: June 8, 2018