

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90130
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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 expressed hostility toward the complainant by “yell[ing]” at, “berating,” and “scold[ing]” him in court.

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 two related matters involving the complainant: an alleged violation of conditions of supervised release and a new criminal prosecution arising out of the same conduct. At the outset of a hearing scheduled on the complainant’s motions to suppress, the complainant expressed dissatisfaction with his attorney’s performance and revealed that he had filed a (not yet docketed) motion for replacement of counsel. While responding to the complainant’s and his attorney’s explanations of their disagreement, the subject judge—prompted, according to the complainant, by his raising his forefinger next to his head—admonished the complainant not to speak until she had finished. During the subsequent colloquy as to whether the complainant wished to proceed with the suppression hearing, the subject judge made comments such as “you may be very bright, but you aren’t a lawyer,” “once you get to talking, you suck all the air out of the room,” “[a]ll you want to do is hear the sound of your own voice,” and “you think you’re a better lawyer [than appointed counsel].” Ultimately, the subject judge adjourned the hearing pending consideration of the complainant’s motion for new counsel. The

subject judge referred that motion to a magistrate judge, who appointed new counsel for the complainant.

Treating a litigant “in a demonstrably egregious and hostile manner” constitutes cognizable judicial misconduct. Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. But the subject judge’s comments here were not “sufficiently rude, derogatory or intemperate” to meet that standard. *In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1098 (9th Cir. 2014). Although the judge expressed frustration with the derailment of the suppression hearing and a rather blunt assessment of the complainant’s courtroom demeanor, she “did not use demeaning language or heap abuse on” the complainant. *Id.* at 1099. And she granted the complainant the relief he sought—adjournment of the hearing and consideration of his motion for new counsel. This complaint is thus subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: July 25, 2019