

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

In re:  
Complaints of Judicial Misconduct

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\*Nos. 06-19-  
\*90002/50/51  
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**MEMORANDUM AND ORDER**

These complaints of judicial misconduct were filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge 1”), and the Honorable **[REDACTED]** and the Honorable **[REDACTED]** (“subject judges 2 and 3”), pursuant to 28 U.S.C. § 351. The first complaint alleges that subject judge 1 refused to require the district court clerk’s office to file motions that the complainant tendered in connection with a closed civil action. A supplement to that complaint alleges that subject judge 1 also refused to require service of process in a subsequent civil action. The second complaint alleges that subject judge 2 made improper recommendations and rulings at the request of subject judge 1. The third complaint alleges similarly that subject judge 3 made an improper recommendation at subject judge 1’s request and improperly rejected a post-judgment motion.

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).

*First civil action.* An initial review of the record reveals that the complainant filed a civil action in 2017 and that the district judge to whom the action was assigned (not a subject judge here) dismissed it. The complainant tendered a motion for summary judgment, but subject judge 3 ordered that the summary judgment motion be rejected. The complainant then wrote a letter to subject judge 1, in his capacity as chief judge of the district, asking him to require the filing of the complainant’s summary judgment motion. Subject judge 1 responded that his administrative duties did not include review of subject judge 3’s decision to reject the complainant’s motion.

The complainant then tendered a motion for entry of judgment in his favor, and subject judge 3 rejected that motion as well. Again, the complainant wrote to subject judge 1, requesting assistance with the filing of his motion. And again, subject judge 1 explained that he could not review the order rejecting the complainant's tendered motion. The complainant then filed his first complaint of judicial misconduct.

*Second civil action.* Meanwhile, the complainant filed another civil action in 2018. Subject judge 2 granted leave to proceed in forma pauperis and recommended that the action be dismissed, and the district judge to whom the case was assigned (not a subject judge here) dismissed it. The complainant filed a series of post-judgment motions, including a motion for sanctions and a motion to dismiss the defendants' pleadings. Subject judge 2 denied the sanctions and dismissal motions and warned the complainant that continued filing of frivolous pleadings could result in sanctions. These events prompted the complainant's second misconduct complaint.

*Third civil action.* The complainant filed a third civil action in 2019. Subject judge 3 granted leave to proceed in forma pauperis and recommended that the action be dismissed. Subject judge 1 adopted the recommendation and dismissed the action. The complainant then tendered a motion for service of process, and subject judge 3 ordered that the motion be rejected because the case was closed. The complainant filed multiple post-judgment motions, all of which subject judge 1 denied. The complainant continued to tender post-judgment motions, and subject judge 1 rejected them. These events prompted the complainant's third misconduct complaint, as well as a supplement to his initial complaint.

In substantial part, the complaint against subject judge 1 is 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). It was not misconduct for subject judge 1 to refuse to order that the complainant's motions be filed. To the contrary, such action would have constituted reversal of subject judge 3's orders rejecting the motions, and, as subject judge 1 repeatedly explained to the complainant, subject judge 1 lacked authority to review those orders. Nor is any misconduct alleged with respect to the non-service of the complainant's third civil action. Because the action was dismissed upon initial screening, service was not required.

To the extent that the complaint against subject judge 1 challenges his decisions to dismiss the complainant's third civil action and to deny and reject his post-judgment motions, it is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the judge's decisions. *See also* 28 U.S.C. § 352(b)(1)(A)(ii). Likewise, insofar as they allege improper recommendations and rulings, the complaints against subject judges 2 and 3 are subject to dismissal. 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).

Finally, to the extent that these complaints allege that subject judge 1 directed the actions of subject judges 2 and 3, or that the subject judges otherwise conspired to frustrate the complainant's efforts to litigate, the complaints are subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). Those allegations are entirely unsupported by the record.

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)(A)-(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: September 24, 2019