

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

In re:
Complaint of Judicial Misconduct

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*No. 06-19-90072
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MEMORANDUM AND ORDER

This complaint of judicial misconduct and disability 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 denied the complainant counsel at his criminal trial, addressed him by the wrong name at trial, exhibited other lapses in memory, and engaged in angry outbursts in front of the jury.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct or disability 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 the 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 or that a disability exists.” 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 complainant’s federal criminal proceeding was assigned to the subject judge. Early in the proceeding, a magistrate judge granted the complainant’s request to represent himself and appointed standby counsel. Later, the magistrate judge granted counsel’s motion to withdraw and appointed new standby counsel. The subject judge denied the new standby attorney’s subsequent motion to withdraw, and the case proceeded to trial with the complainant representing himself. During trial, the subject judge denied the complainant’s requests to have standby counsel take over his defense. The jury convicted the complainant of eleven offenses, and the subject judge sentenced him to 480 months of imprisonment.

To the extent that this complaint challenges the subject judge’s decisions to allow the complainant to represent himself (with standby counsel) and not to permit hybrid

representation, it 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. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

The complaint's allegations that the subject judge had lapses in memory and engaged in angry outbursts are subject to dismissal under Rule 11(c)(1)(D). *See also* 28 U.S.C. § 352(b)(1)(A)(iii). The trial transcript does not contain sufficient evidence to support these allegations. The transcript does reflect that the subject judge called the complainant by the name of his co-defendant on at least one occasion, but that error—immediately corrected by the subject judge—does not indicate a mental disability.

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

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

Date: October 30, 2020