

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-19-90112
*
*
*
*

MEMORANDUM AND ORDER

This complaint of judicial 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 demonstrated cognitive impairment by crediting an unsworn statement that did not comply with the requirements of 28 U.S.C. § 1746.

After conducting an initial review, the chief judge may dismiss a complaint of judicial disability as to which he concludes: (A) that the claimed conduct, even if it occurred, “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 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 filed a motion for a new trial in his criminal case and a motion to vacate his sentence. In a 2018 opinion and order denying those motions, the subject judge credited, as consistent with the record, a statement submitted by the complainant’s trial attorney. That statement was not notarized and was not made “under penalty of perjury” as required by 28 U.S.C. § 1746. The complainant points out that in a 2015 order, in an unrelated case, the subject judge held that a declaration did not meet the requirements of § 1746 because it was not made “under penalty of perjury.”

The complaint alleges that inconsistency between the 2015 and 2018 orders evidences “an enormous decrease” in the subject judge’s mental acuity. Because the complaint is directly related to the merits of the 2018 opinion and order, it is subject to dismissal under Rule 11(c)(1)(B). See also 28 U.S.C. § 352(b)(1)(A)(ii). An argument that the subject judge erred in crediting counsel’s statement is a claim of legal error that

is properly raised on appeal. 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). Moreover, the complaint is subject to dismissal under Rule 11(c)(1)(A) and (D), because the alleged inconsistency is not suggestive of mental disability. And it is not clear that the subject judge made a mistake in this instance. He did not decide that counsel's statement met the requirements of § 1746. He merely observed, in a footnote, that counsel's statement corroborated facts that were otherwise established by the record.

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

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

Date: November 13, 2020