JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:	*	
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Complaints of Judicial Misconduct	*	06-25-90085-86
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [redacted] ("complainant") against [redacted] ("subject judge 1"), and [redacted] ("subject judge 2"), both of [redacted]. *See* 28 U.S.C. § 351.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct 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." Rules 11(c)(1)(A)–(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Judicial-Conduct Rules"); *see* 28 U.S.C. § 352(a), (b).

The subject judges presided over the complainant's underlying petition for a writ of habeas corpus. Subject judge 2 recommended that the petition be denied. Subject judge 1 adopted that recommendation and denied several other pending motions as moot.

The complainant has previously filed misconduct complaints against both subject judges, all of which have been dismissed. A complaint filed against subject judge 2 in 2024 challenged his recommended dismissal of the habeas petition.

The present misconduct complaint repeats that claim (this time adding subject judge 1), alleging that the habeas petition was "incorrectly and illegally dismissed for being untimely." It also alleges that subject judge 1 failed to enter timely rulings on motions, and that subject judge 2 is committing legal malpractice because his state law license is inactive.

Dismissal of Habeas Petition. The allegations regarding subject judge 2's habeas ruling are duplicative of claims raised in the 2024 misconduct complaint that was dismissed as merits-related. These repeated allegations are yet again subject to dismissal. "A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge." Judicial-Conduct Rule 11(c)(2). On the other hand, allegations that are identical to those made in a prior, rejected complaint may be dismissed. *See In re Complaint*, Nos. 05-10-90223–90226 (5th Cir. C.J. Nov. 19, 2020). Because the challenge to subject judge 2's habeas ruling was rejected in the prior complaint proceeding, it is now dismissed as frivolous. *See* Judicial-Conduct Rule 11(c)(1)(C).

To the extent the complaint raises new challenges to the rulings in the underlying case, these claims also merit dismissal. The judicial-complaint process may not be used to challenge the merits of judicial decisions made in underlying proceedings; such decisions are not the proper subject of a complaint of judicial misconduct. *See* Judicial Conduct Rule 4(b)(1). The Judicial Council is not a court and has no jurisdiction to review the subject judges' rulings or to grant relief requested in the underlying case. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Any new challenges to their rulings are dismissed as directly related to the merits of subject judges' decisions. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Failure to Rule on Motions. The complaint alleges that subject judge 1 failed to rule on motions in a timely manner. A claim of delay is cognizable in misconduct proceedings only if accompanied by an allegation that a particular decision was deliberately delayed with an improper motive, or that the subject judge has habitually delayed decisions in a significant number of unrelated cases. *See* Judicial-Conduct Rule 4(b)(2). Conversely, a complaint of delay in a single case may be said to challenge the correctness of a judge's official action and is merits-related. *See* Commentary to Judicial-Conduct Rule 4.

This allegation warrants dismissal. A review of the record reveals that the complainant filed numerous motions throughout the underlying case, many of them pro se. Given the volume of filings and the complaint's failure to identify any of the exceptions listed in Judicial-Conduct Rule 4(b)(2), this allegation is dismissed as merits-related. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rules 11(c)(1)(B).

Law License. Finally, subject judge 2 did not commit misconduct by maintaining an inactive law license. To hold office as a federal magistrate judge, a person must have been "for at least five years a member in good standing of the highest court of a State." 28 U.S.C. § 631. The statute does not require an active law license following appointment. To the contrary, federal judges may not practice law. *See* Canon 4(A)(5), Code of Conduct for U.S. Judges. Moreover, the state rules governing subject judge 2 permit lawyers occupying federal judicial office to keep an inactive law license. This allegation is therefore dismissed as alleging conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts. See 28 U.S.C. § 352(b)(1)(A)(i); Judicial-Conduct Rule 11(c)(1)(A).

Accordingly, it is **ORDERED** that the complaint be dismissed under 28 U.S.C. § 352(b)(1)(A)(i)–(iii) and Judicial-Conduct Rules 11(c)(1)(A)–(C).

/s/ Jeffrey S. Sutton
Chief Judge

Date: August 25, 2025