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

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| In re: | * |
| Complaint of Judicial Misconduct | *No. 06-14-90006 |
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## MEMORANDUM

This complaint was filed with the Judicial Council of the Sixth Circuit pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, as amended by the Judicial Improvements Act of 2002, Pub. L. No. 107-203, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Rules Governing Complaints of Judicial Misconduct adopted by the Judicial Council of the Sixth Circuit.

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes:

(1) that the claimod conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported.

Rule 4(c), Rules Governing Complaints of Judicial Misconduct or Disability.

This complaint was brought by a prisoner against the district judge who presided over his criminal trial and later denied several post-judgment challenges to the resulting conviction and sentence. The complaint challenges the subject judge's rulings at trial and in post-conviction proceedings. Specifically, complainant alleges that the subject judge improperly allowed the government to call certain witnesses at trial; failed to give an alibi instruction; ordered the destruction of evidence prior to the filing of a motion to vacate pursuant to 28 U.S.C. § 2255; and held "ex-parte communications in which it was alleged the plaintiff had agreed in writing to a stipulation."

A complainant may not use the judicial complaint process to challenge the merits of the subject judge's decisions in underlying proceedings. *See* 28 U.S.C. § 352(b)(1)(A)(ii)

and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such decisions are not the proper subject of a complaint of judicial misconduct. *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 the named judge's rulings or to grant relief requested in the underlying case. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

All of complainant's allegations are appropriately dismissed as merits-related under 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant raised in his motion to vacate under 28 U.S.C. § 2255 a claim that the subject judge ordered destruction of the evidence, and the district court ruled against him on the merits. Complainant also challenged the stipulation in question (a stipulation that the bank he was accused of robbing was insured by the Federal Deposit Insurance Corporation) in his § 2255 motion, arguing there that his trial counsel was ineffective for entering the stipulation. The related allegation in his judicial complaint is a poorly disguised attempt to reargue the merits of that claim.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Alice M. Batchelder
Chief Judge

Date: 08-01-14