

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-14-90110  
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**M E M O R A N D U M**

This complaint of judicial misconduct was filed by a pro se prisoner against the district judge who presided over his criminal trial. The complaint alleges that the district judge participated in a “conspiracy to commit fraud on the court, . . . to withhold *Brady* materials, . . . and [to] violate U.S. Constitutional Rights.” For support, the complaint points to (1) comments that the district judge made at a hearing on the complainant’s second attorney’s motion to withdraw; (2) comments that the district judge made at a hearing on a suppression motion; and (3) the district judge’s denial of the complainant’s request to replace his third attorney and his motions for a new trial, for recusal, and for reconsideration of the order denying the motion for a new trial.

After conducting an initial review, the chief judge may dismiss a 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 and does not indicate a mental or physical disability resulting in 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.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An initial review of the district-court record reveals that on October 31, 2011, the district judge conducted a hearing on the complainant’s second attorney’s motion to withdraw. At the hearing, the complainant presented a letter about his dissatisfaction with his attorney’s performance; the letter included an allegation that the attorney had failed to investigate purported false statements in a search warrant affidavit. The district judge asked the attorney to state, “without going into any detail,” whether he and the complainant had discussed challenges to the search warrant. The complainant now asserts that the court’s instruction not to “go[] into any detail” aided in the withholding or suppression of exculpatory evidence. Similarly, the complainant asserts that the district

judge “participated in the conspiracy to commit fraud on the court” when, at a February 15, 2012, motion hearing, the judge refused to hear the complainant’s further comments on a motion to suppress evidence that the judge had already granted. The thrust of these assertions is that the district judge covered up false statements that the complainant was attempting to bring to light.

To the extent that it is based on these and similar allegations that the district judge conspired with the prosecutor and defense counsel to conceal “false facts,” the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The record contains no evidence that the district judge’s comments and actions had any intent or effect other than (1) to preserve the confidentiality of attorney-client communications and (2) to manage appropriately the courtroom proceedings.

To the extent that it is based on the district judge’s rulings on the complainant’s motions, the complaint 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 the 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 ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

For these reasons, this complaint will 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: January 5, 2015