

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-15-90090/91
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M E M O R A N D U M

These complaints of judicial misconduct were filed by a pro se prisoner against the district judge who presided over his criminal and 28 U.S.C. § 2255 proceedings and a circuit judge who sat on a panel that affirmed the denial of two post-judgment motions. The complaints allege that the district judge erroneously enhanced the complainant's guidelines sentencing range and that both judges exhibited bias, prejudice, and "disrespect for the law" by failing to correct the error.

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 the complainant pleaded guilty to a charge of possession of a stolen firearm. In accordance with the parties' plea agreement, the district judge sentenced him to 120 months of imprisonment. After voluntarily dismissing his direct appeal, the complainant moved to vacate his sentence under § 2254. The district judge denied that motion. The complainant moved for re-sentencing and to set aside the criminal judgment, but the district judge denied those motions as well. A court of appeals panel that included the subject circuit judge affirmed that ruling.

These complaints are subject to dismissal on the ground that they are directly related to the merits of the subject judges' decisions. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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.

To the extent that the complaints allege bias, prejudice, and "disrespect for the law," they are subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). There is no evidence supporting such allegations.

For these reasons, these complaints will be dismissed under 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: November 10, 2015