

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

In re:  
Complaints of Judicial Misconduct

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\*Nos. 06-15-90125/126  
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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 and magistrate judges to whom the complainant's 28 U.S.C. § 2255 motion to vacate his convictions and sentences for security and tax fraud were assigned. The complainant argues that both judges should have recused themselves from those proceedings because of actions they took in prior, unrelated proceedings.

The complainant alleges that the subject district judge presided over a civil case brought by the plaintiff some five years before his criminal trial in which the ownership of certain property was disputed. Although the district judge was "aware of the ownership" of that property, the value of which was pertinent to the complainant's defense in his later criminal trial, he denied "any and all motions regarding the filings" in the subsequent § 2255 proceedings.

With respect to the subject magistrate judge, the complainant alleges that the judge, when presiding over prior "SEC proceedings," urged the complainant not to challenge, based on the judge's view of the evidence, some disputed language that the SEC has asked to be included in an unspecified order. This, according to the complainant, constituted a "fraud upon the court," and demonstrated bias which should have required the magistrate judge to recuse himself. The complainant apparently believes, although it is not entirely clear, that the adverse rulings made by the magistrate judge in the § 2255 proceedings are a result of this bias.

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.

The gravamen of these complaints is the complainant’s dissatisfaction with the subject judges’ rulings in his § 2255 proceedings. The complaints are therefore subject to dismissal as directly related to the merits of the named judges’ decisions in complainant’s underlying § 2255 proceedings 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. 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 any rulings by a judge, or to grant the relief that may be requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). The presiding judges’ failure to recuse does not change this calculus: a mere allegation that a judge should have recused him- or herself, as opposed to an allegation that the judge deliberately failed to recuse for an illicit reason, is merits-related and not cognizable in a complaint of judicial misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, Judicial Conduct and Disability Act Study Committee, Sept. 2006, p. 146. Here, complainant does not allege any illicit circumstances that motivated the subject judges’ failure to recuse. Complainant’s contentions that the subject judges should have recused are directly related to the merits of their decisions in the § 2555 proceedings, and the complaints are subject to dismissal 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.

Accordingly, the complaints 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.

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

Date: August 17, 2016