

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

In re:  
Complaint of Judicial Misconduct

\*  
\*  
\*No. 06-15-90128  
\*  
\*  
\*  
\*

**M E M O R A N D U M**

This complaint of judicial misconduct was filed by a defendant in a criminal action against the district judge who is presiding over his case. The complaint alleges that the judge became angry with the complainant in court, threatened him, and generally treated him with contempt, hostility, and aggression. The complaint further alleges that the judge is biased against the complainant.

After conducting an initial review, the chief judge may dismiss a misconduct 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”; (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.

A review of the district-court record reveals that the complainant entered a guilty plea in April 2015. Two months later, he moved to withdraw his plea. The district judge held a hearing on the motion over two days in August 2015, granted the motion, and set a date for trial. The complainant then moved for a determination of his competency to stand trial. The district judge granted the motion and ordered an evaluation of the complainant’s competency. When the evaluation was completed, the judge held a hearing and found the complainant to be competent.

This complaint is subject to dismissal under Rule 11(c)(1)(D) because the record does not support the allegations of misconduct. See also 28 U.S.C. § 352(b)(1)(A)(iii). The transcript of the first day of the hearing on the motion to withdraw the guilty plea does not reflect any bias against or animus toward the complainant on the part of the district judge. Transcripts of the second day of that hearing and of the hearing on the complainant’s competency are not in the record.

According to the complainant, the district judge “threatened” him by saying, in connection with the complainant’s desire to withdraw his guilty plea, that he should “be careful what he wished for.” On its face, this is a comment on the risks that accompany trial; it does not constitute a threat amounting to misconduct. Similarly, the judge’s other alleged statements—that the complainant would not be appointed another new attorney, that self-representation would not be in the complainant’s best interests, and that the complainant looked like he wanted to argue with the judge—do not evince bias, prejudice, or hostility. Even if the judge’s comments reflected anger and frustration, which is not apparent from the existing record, those emotions do not rise to the level of judicial misconduct.

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

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

Date: August 17, 2016