

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90040
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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 sentenced him after his guilty plea to a charge of conspiracy to distribute at least five kilograms of cocaine. The substance of the complaint is that, during the sentencing hearing, the district judge pressured the government into seeking an upward variance from an agreed-upon within-Guidelines sentence. The complainant asserts that this conduct reveals a lack of impartiality.

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.

This complaint is subject to dismissal under Rule 11(c)(1)(B) because it is directly related to the merits of the district judge’s sentencing decision. See also 28 U.S.C. § 352(b)(1)(A)(ii). A limited inquiry, consisting of a review of the sentencing transcripts and other court records, reveals that the district judge discussed at sentencing the pre-departure Guidelines range of 151-188 months; the post-departure Guidelines range of 120-121 months, which was based on a 67-month downward departure and a 120-month statutory minimum; and the various reasons that the district judge believed a sentence greater than 121 months was necessary. In the course of this discussion, the district judge sought to clarify whether the government’s request for a sentence “at the top end of the guideline range, which would be 188 months” took into account the 67-month downward departure—in other words, whether the government sought a sentence of 121 months or a sentence of 188 months, which the district judge termed a “variance” from the post-

departure range of 120-121 months. The district judge also discussed with the government's counsel whether a variance would be appropriate for any of the several reasons identified in the complainant's presentence report. The government's counsel ultimately agreed that "sentencing him to 121 months is not sufficient when we apply the § 3553(a) factors." At the conclusion of this discussion, the district judge decided to impose a sentence of 173 months of imprisonment. All of the complained-of conduct occurred as part of the judge's formulation of that decision.

To the extent that the complainant asserts that the district judge was not impartial, the complaint is subject to dismissal under Rule 11(c)(1)(C) as well. See *a/so* 28 U.S.C. § 352(b)(1)(A)(iii). The complainant points only to his sentence and to the district judge's discussion of the reasons for it; he has identified no evidence of partiality.

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) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: October 15, 2014