

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-14-90082/83
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M E M O R A N D U M

This complaint of judicial misconduct was filed against the district judge and magistrate judge who were assigned to the complainant's 28 U.S.C. § 2255 motion to vacate his sentence. The complainant alleges that the judges knew, after they reviewed his § 2255 motion and the accompanying exhibits, that he had been framed and that his indictment and subsequent conviction were obtained through the use of law enforcement officers' perjured testimony. According to the complainant, the judges conspired to cover up the officers' alleged misdeeds by denying his § 2255 motion and, more than 20 years later, failing to rule promptly on his "Motion for Fraud on the Court." The complainant requests that the Judicial Council "grant [him] a new trial or set [him] free."

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 "is based on allegations lacking 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 in part under Rule 11(c)(1)(B), as directly related to the merits of the judges' rulings. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). The complainant alleges that the magistrate judge covered up perjury and conspiracy by recommending denial of his § 2255 motion, and that the district judge did the same by denying the motion. The judges' merits determinations are outside the scope of judicial-misconduct proceedings. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council has no jurisdiction to review any rulings by a judge or to grant the relief requested by the complainant. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

To the extent that the complaint is based on the eleven-month delay in ruling on the complainant's "Motion for Fraud on the Court," they are subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a delay in making a ruling or decision does not constitute misconduct absent a showing of improper motive or habitual delay. Review of the district court record reveals that the complainant cannot make a showing of anything more than routine delay. On July 17, 2014, the district judge denied the "Motion for Fraud on the Court" and disposed of all of the complainant's other pending motions.

For these reasons, the 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: November 26, 2014