

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-14-90122  
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**M E M O R A N D U M**

This complaint of judicial misconduct was filed by the defendant in a criminal prosecution against the district judge who was assigned to the case. The complaint alleges that the district judge detained the complainant “without due process,” “denied the [c]omplainant his right to counsel,” obstructed justice by “[t]hreatening the [complainant] and encouraging the destruction of evidence,” denied the complainant’s motions, and ruled that the complainant had no right of access to grand jury testimony. The complaint also alleges that the district judge engaged in ex parte communications with a prosecutor.

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 and does not indicate a mental or physical disability”; (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 or that a disability exists.” 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 was released on bond, subject to certain conditions, while awaiting trial. At a hearing in April 2014, the complainant waived his right to counsel and agreed that his previously appointed attorney would act as stand-by counsel. But, in May 2014, the district judge granted the complainant’s motion for appointment of new counsel and for withdrawal of stand-by counsel. In July 2014, the district judge revoked the complainant’s bond. In August, the complainant chose again to waive his right to counsel and to proceed pro se, with his appointed attorney acting as stand-by counsel. At that time, the district judge denied the complainant’s motions for reinstatement of the bond and for recusal. Later, the district judge granted a renewed motion for reinstatement of the complainant’s

bond. In October, the district judge denied the complainant's motions to suppress evidence, for production of grand jury transcripts, and for appointment of new counsel, among others. The case proceeded to trial, and the complainant was convicted.

To the extent that it is based on the district judge's rulings on various motions, including the motions for revocation and reinstatement of the complainant's bond, for appointment of new counsel, and for grand jury transcripts, this complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). A challenge to the merits of the district judge's rulings is outside the scope of judicial-misconduct and judicial-disability proceedings. 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 ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

To the extent that it alleges threats and destruction of evidence by the district judge, the complaint is subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complaint sets forth no specific facts, and the record contains no evidence, to support these allegations.

Finally, to the extent that it alleges *ex parte* communications between the district judge and a prosecutor, the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complainant claims that he saw the judge talking to the prosecutor before a bond revocation hearing in July 2014, but he does not claim to have heard what was said. *Ex parte* communications that do not involve the substance of any pending or impending matter are not prohibited. See Canon 3(A)(4), Code of Conduct for United States Judges. Thus, even if true, the facts alleged are insufficient to support an inference that misconduct occurred or that a disability exists.

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

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

Date: January 21, 2015