

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90006
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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 litigant against the district judge who is presiding over his criminal proceedings. The thrust of the complaint is that the district judge has evidence, or the ability to obtain evidence, that would exonerate the complainant but has failed to develop and present that evidence.

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.

An initial review of the district-court record reveals that the complainant pleaded guilty to a charge of communicating a threat in interstate commerce. He was sentenced to time served, followed by three years of supervised release. The district judge later modified the conditions of the complainant's supervised release so as to require him to consult with his probation officer before sending unsolicited correspondence to any government agency or employee. Most recently, the district judge issued a summons for the complainant to appear at a hearing on allegations that he violated conditions of his supervised release by leaving the judicial district without permission and failing to appear for scheduled mental health treatments.

The complaint alleges that the district judge has exculpatory evidence and a list of witnesses whose testimony would exonerate the complainant. According to the complainant, the district judge's failure to present the evidence and to question the witnesses constitutes "spoliation of evidence," "obstruction of justice," "legal malpractice," "abuse of process," and other wrongs. These allegations reflect an

apparent misunderstanding of the judge's role in our adversarial system of justice. A district judge is not required to—indeed, is not permitted to—investigate the facts and develop the record. Accordingly, this complaint is subject to dismissal under Rule 11(c)(1)(A) because the alleged failure to “bring forth . . . evidence,” even if it occurred, would not constitute cognizable misconduct. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

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

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

Date: April 1, 2015