

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90024
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a prisoner against the district judge who presided over his criminal proceeding. The complaint alleges that the district judge gave a newspaper “access to non-public confidential victim impact statements” after sentencing the complainant. It further alleges that the district judge improperly denied a motion for recusal that the complainant filed in light of the alleged disclosure.

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.

An initial review reveals that the district judge sentenced the complainant in November 2014. The same day, a newspaper reporter posted an article about the sentencing that quoted a letter that one of the complainant’s victims had written to the judge (i.e., a victim impact statement). Evidence submitted by the complainant supports his allegation that a copy of this letter was furnished to the reporter by the judge or a member of the judge’s staff.

The allegation of misconduct is based on the premise that the judge had a duty to keep victim impact statements confidential. But nothing in the Crime Victims’ Rights Act, 18 U.S.C. § 3771, imposes such a duty. The complainant argues that the victim impact statements had to be kept confidential because they were appended to the presentence report. See Fed. R. Crim. P. 32(d)(2)(B) (requiring presentence reports to include victim impact information). The district court’s local rules prohibit disclosure of

presentence reports to third parties, consistent with the general policy of the federal courts. See, e.g., *United States v. Huckaby*, 43 F.3d 135, 137-38 (5th Cir. 1995). But the district judge is not alleged to have given the reporter a copy of the presentence report, and appending an otherwise non-confidential document to a presentence report cannot render that document itself confidential. The claimed conduct did not violate any duty and was not prejudicial to the effective and expeditious administration of the business of the courts. Therefore, to the extent that the complaint is based on the alleged disclosure of victim impact statements, it is subject to dismissal under Rule 11(c)(1)(A).

To the extent that it is based on the district judge's denial of the complainant's recusal motion, the complaint is subject to dismissal under Rule 11(c)(1)(B). See also 28 U.S.C. § 352(b)(1)(A)(ii). Challenges to a judge's substantive and procedural rulings 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 does not have jurisdiction to review any such rulings. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

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

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

Date: June 29, 2015