

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90028
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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 presided over his criminal proceeding and denied his 28 U.S.C. § 2255 motion to vacate his sentence. The complaint alleges that the district judge lacked authority to dismiss the complainant's 28 U.S.C. § 2241 petition for a writ of habeas corpus because it had been assigned to a different district judge.

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 filed a § 2255 motion on August 21, 2013. That motion was docketed both in the complainant's criminal proceeding, which was pending before the subject judge, and as a new civil proceeding assigned to the same judge. On August 26, 2013, the complainant filed a § 2241 petition. That petition was docketed as another new civil proceeding and assigned to a different district judge. On September 19, 2013, the subject judge denied the complainant's § 2255 motion and dismissed the related civil action without prejudice. The complainant's § 2241 petition remained pending, until the other district judge dismissed it without prejudice on November 6, 2013.

This complaint is subject to dismissal under Rule 11(c)(1)(C) because it is wholly unsupported by the record. See also 28 U.S.C. § 352(b)(1)(B). The record clearly shows that the subject judge did not dismiss the complainant's § 2241 petition that had been assigned to another district judge.

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

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

Date: June 29, 2015