

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90036/37
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a former prisoner against the district judge and magistrate judge who were assigned to his criminal and post-conviction proceedings. The gist of the complaint is that the subject judges participated in a “racist conspiracy” to deny the complainant due process, secure an unjust conviction, and impose an improper sentence. The complaint claims a variety of legal, evidentiary, and procedural errors at trial, at sentencing, and on collateral review, all of which are attributed to the alleged conspiracy.

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.

A review of the district-court record reveals that the complainant was convicted by a jury and sentenced in 2005. The subject judges presided over the pretrial proceedings, trial, and sentencing. In 2008, the complainant unsuccessfully moved to vacate his sentence under 28 U.S.C. § 2255. In 2014, the complainant sought habeas corpus relief under 28 U.S.C. § 2241. The district court in which he filed the § 2241 petition transferred it to the district court in which he was convicted, and the subject district judge transferred it to the court of appeals as a second or successive motion to vacate. The court of appeals dismissed the motion for want of prosecution.

Although the complaint broadly alleges a conspiracy, the specific allegations are of claimed errors by the subject judges. The complaint is thus subject to dismissal 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). Any challenge to the merits of a judge's decision is outside the scope of judicial-misconduct 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).

Insofar as the complaint attributes the claimed errors to the judges' participation in a "racist conspiracy," it is subject to dismissal under Rule 11(c)(1)(C) as wholly unsupported by any evidence. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

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

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

Date: August 28, 2015