

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90049
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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. The complaint alleges that the district judge refused to consider evidence of an illegal search of the complainant's home and thus "upheld" police misconduct in violation of the complainant's rights.

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 filed a motion to suppress evidence based on the allegedly illegal search of his home. The district judge denied the motion after a hearing. The complainant later filed a new motion to suppress and a motion to reopen the suppression hearing on the basis of new evidence. The district court initially granted the motion to reopen the hearing, but after hearing arguments it denied that motion and the renewed motion to suppress.

The case was tried to a jury, which convicted the complainant of two offenses. The complainant moved for a judgment of acquittal, again raising issues relating to the allegedly illegal search, and the district judge set the hearing on that motion for the same day as the sentencing hearing. But both hearings were continued, and the complainant (proceeding pro se with standby counsel) was not permitted to present evidence at that time. At the continued hearing on the motion for judgment of acquittal, the complainant presented his evidence and the district judge denied the motion.

This complaint is subject to dismissal under Rule 11(c)(1)(B) because it is directly related to the merits of the district judge's rulings. See also 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's decisions 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).

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

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

Date: August 28, 2015