

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-15-90059
*
*
*
*

M E M O R A N D U M

This complaint of judicial misconduct was filed by a federal prisoner against the district judge who presided over the criminal proceedings that led to his convictions and sentence. The complaint first alleges the existence of “secretly wiretapped conversations” between the subject judge and a county official who was subsequently indicted, tried, and convicted on corruption charges. According to the complainant, he has heard it alleged that the subject judge contacted the now-convicted official to seek employment opportunities for his (the subject judge’s) girlfriend. Based on these second-hand allegations, the complainant charges that the subject judge used his office to obtain special treatment for friends. The complainant admits that the tapes on which his allegations are based have never been released. He attaches to his complaint a computer print-out of an article from a television news outlet’s website in which it is alleged that wire-tap recordings captured the convicted county official calling the subject judge to solicit the judge’s help in finding a job for his (the county official’s) son. The article also reports that unidentified “insiders” stated that the subject judge had earlier called a different county official (who was also subsequently convicted on corruption charges) seeking employment opportunities for his (the judge’s) girlfriend. The subject judge was apparently interviewed for the article and denied that he ever spoke to either of the county officials involved about a job for his girlfriend.

The rest of the complaint is addressed to alleged defects in the proceedings below, including the existence of secret evidence which either the government did not disclose or the subject judge would not admit. The complainant posits that he has not been allowed to present this evidence, and prove his innocence, because the subject judge “may either be on some of the taped conversations or because the U.S. Attorney’s Office desperately wants me in jail.” He also attaches to his complaint orders from two unrelated cases, both of which, he contends, reflect poorly on the subject judge and require that he be recused from presiding over his currently pending motion to vacate his sentence.

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.

Complainant’s allegations regarding the subject judge’s phone call to the corrupt county official are unsupported by the evidence. Even the copy of the article attached to the complaint, which itself is based on innuendo and hearsay, does not support a finding that the subject judge called the county official. Even were we to assume that the unnamed “insiders” referred to in the article were telling the truth, and that the subject judge was not when interviewed, there is still no evidence supporting the complainant’s allegations that the judge used his office or attempted to use his office to obtain special treatment for friends or family. The orders that the complainant attaches are unrelated to his case, completely irrelevant to any of the allegations contained in the complaint, and do not serve as independent bases for an allegation of misconduct or disability. This part of the complaint must therefore be dismissed as lacking any factual foundation pursuant to 28 U.S.C. § 352(b)(1)(B) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The remainder of the complaint is a series of challenges to the evidence supporting the complainant’s convictions, the procedures used to obtain those convictions, and the rulings of the subject judge during the proceedings leading to those convictions. Although he attributes many of these adverse rulings to the allegedly taped phone calls, because those allegations are without support, any allegations of an improper motive for the subject judge’s rulings in the underlying criminal proceedings must also fail. This part of the complaint must therefore be dismissed as directly related to the merits of the named judge’s decisions in the underlying proceedings 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. Such decisions are not the proper subject of a complaint of judicial misconduct. 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 the named judge’s rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

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

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

Date: November 10, 2015