

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-15-90132  
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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 and post-conviction proceedings. The complaint alleges that the district judge has conspired with an assistant United States attorney to prevent reversal of the complainant's conviction. Specifically, the complaint alleges that the judge arranged to have statements that she made on the record removed from the transcript of a 2006 suppression hearing so as to conceal an error that would have resulted in reversal on appeal. The complaint further alleges that the judge improperly denied the complainant's 28 U.S.C. § 2255 motion and improperly refused to accept a subsequent motion for relief from the judgment.

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 pleaded guilty to a drug offense and was sentenced to 240 months of imprisonment. The court of appeals affirmed his conviction and sentence. The complainant moved to vacate his sentence under 28 U.S.C. § 2255, and the district judge denied the motion and declined to issue a certificate of appealability. The court of appeals likewise declined to issue a certificate of appealability. The complainant petitioned for a writ of audita querela, and the district judge denied the petition and stated that the court would not accept any further requests for relief. Although the court of appeals affirmed that order, the complainant filed a petition for a writ of error coram nobis. The district judge denied the petition, and the court of appeals again affirmed.

The complainant filed several additional challenges to his conviction and sentence, some styled as motions to reopen the original § 2255 proceeding, and some styled as new § 2255 motions. The district judge transferred these filings to the court of appeals for consideration as motions for leave to file a second or successive § 2255 motion. The court of appeals denied these motions. The district judge again informed the complainant that further requests for relief would not be accepted. The complainant moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), and the district judge denied the motion.

In April 2014, the complainant attempted to file a new motion for relief under § 2255. The district judge rejected the filing. Later that year, and again in November 2015, the complainant attempted to file a motion for relief under Rule 60 of the Federal Rules of Civil Procedure. The district judge rejected these filings as well.

The complaint's allegations that the district judge caused transcripts to be altered (or otherwise conspired to prevent the complainant's direct appeal from succeeding) are entirely unsupported. Thus, the complaint is subject to dismissal in part under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

The remainder of the complaint's allegations are directly related to the merits of the district judge's orders, particularly those orders that denied the complainant's § 2255 motion and rejected his subsequent attempts to collaterally attack his conviction. Those portions of the complaint are subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's orders 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).

For these reasons, 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 17, 2016