

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

In re:
Complaint of Judicial Misconduct

*
*
*Nos. 06-16-
*90025/26/27
*
*
*

MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complainant alleges that several documents that he sent to this court in connection with his appeal of a district court’s denial of his motion to vacate sentence pursuant to 28 U.S.C. § 2255 were not filed in that case. He states that he sent to the court an affidavit from a trial witness who swore that he was forced to wear a wire and to later testify about the conversations with the complainant that were captured by that wire, and “a motion for expansion of COA concerning Johnson v. United States” on August 31, 2015. Claiming that neither of those documents appear in the record, he charges that the subject judges conspired with the clerk of the court and a deputy clerk to deprive him of his right to access the courts by deliberately destroying or concealing those documents. He also alleges that the court “never let [him] explain his basis for why he should be granted a COA,” or “submit a Memorandum of Law.” Finally, he charges that the clerk of court “has been making and forging docket entries” in his case. In support of that allegation, he points to a docket entry dated December 28, 2015, that reflects the filing of his request for a status update and alleges that he never filed any documents in December 2015.

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.

The complainant’s appeal of the denial of his § 2255 motion was docketed in this court on June 4, 2014. He was notified by the clerk, as are all pro se appellants appealing

the denial of a § 2255 motion, that he could either file a motion for a certificate of appealability (“COA”) or wait until the court of appeals conducts its own review to determine if any of the issues raised in the district court are worthy of appeal. He was also informed in that letter that he must pay the filing fee or file a motion to proceed in forma pauperis (“IFP”) on appeal by a certain date. The complainant filed a motion to proceed IFP in which he stated that, due to his lack of legal acumen, he did “not know what issues he would raise at this time,” and asked the court to “give great weight” to his appeal. With no COA application having been filed, a judge of this court reviewed the district court record and denied the complainant a COA in an order entered on July 15, 2015. That judge was not named in the instant judicial complaint. On September 3, 2015, complainant filed in this court a petition for panel rehearing and suggestion for rehearing en banc of the order denying him COA. Attached to that motion were, among other things, the affidavit and the motion to expand the COA to add a *Johnson* claim that he attached to this complaint. That motion was denied by the subject judges, and no poll was requested.

Complainant’s allegations that his motion to “expand” the COA and the affidavit of a trial witness were destroyed or concealed are belied by the record. He submitted both as attachments to the petition for panel rehearing and suggestion for rehearing en banc that was filed on August 31, 2015, and copies of both appear in the docket sheet. And there is nothing in the docket sheet suggesting that he requested or was denied an opportunity to file any documents. Because he cannot show that the subject judges engaged in any conduct prejudicial to the effective and expeditious administration of the business of the courts, the complaint is appropriately denied under 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 complainant’s allegations against the clerk of court and deputy clerks are not cognizable in these proceedings, as the Rules for Judicial-Conduct and Judicial-Disability Proceedings cover only the conduct of judges. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, those allegations are likewise belied by the record, as the docket sheet contains documents that were executed by the complainant, signed by him, mailed in an envelope with his name and address on the return line, and post-marked December 24, 2015.

For these reasons, it is **ORDERED** that the complaint be dismissed 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.

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

Date: December 16, 2016