

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-16-90036  
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**MEMORANDUM AND ORDER**

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judge denied certain motions in his 28 U.S.C. § 2255 proceeding without allowing him time to reply to the respondent’s opposition memorandum. According to the complainant, this action reflects bias on the part of the subject judge.

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; see 28 U.S.C. § 352(a), (b).

An initial review of the record reveals that the complainant filed a motion to vacate his sentence under § 2255, a motion to expedite the ruling on that motion, and a motion to stay his term of supervised release pending the ruling. The subject judge ordered the respondent to file its responses to these motions within 21 days. The judge’s order allowed the complainant 14 days to file any reply memorandum. The respondent filed a timely response to the motions to expedite and to stay supervised release, which included a proposed order denying the motions. Apparently interpreting the proposed order as an order of the court, the complainant filed a motion for reconsideration, which the district court construed as a timely reply memorandum. The subject judge then denied the motion for a stay of supervised release.

This judicial-misconduct complaint rests on a misunderstanding of the proceedings in the district court. The record conclusively establishes that the subject

judge did not deny any of the complainant's motions without allowing him the allotted 14 days to reply to the respondent's memorandum in opposition. The order that the complainant claims is improper is a proposed order submitted by the respondent, not an order of the court. Accordingly, the complaint is subject to dismissal under Rule 11(c)(1)(C) as wholly unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that the complaint is based on the subject judge's denial of the motion to stay, which occurred *after* the complainant filed his reply memorandum, it is 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 rulings 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 decision by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

Accordingly, it is **ORDERED** that the complaint 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: December 16, 2016