

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

In re:
Complaints of Judicial Misconduct

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*No. 06-16-90061
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MEMORANDUM AND ORDER

These complaints of judicial misconduct were filed by **[REDACTED]**, a married couple who were convicted of drug and financial offenses in the district court, and **[REDACTED]** (“complainants”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complainants contend that the underlying convictions violated the *ex post facto* clause, challenge various rulings made by the subject judge during the underlying criminal proceedings against complainants one and three, and allege that the subject judge has failed to rule upon a motion to vacate under 28 U.S.C. § 2255 that the convicted complainants filed.

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 complainants’ challenges to the criminal convictions and the rulings made by the subject judge during the course of those proceedings are subject to dismissal as directly related to the merits of the named judge’s decision in complainant’s 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 any rulings by a judge, or to grant the relief that may be requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process, pursuant to Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complainants have not shown delay, much less unreasonable or persistent delay: a review of the docket sheet in the underlying proceedings shows that the § 2255 motion in question was pending less than two months when the complaints were filed. The parts of the complaints that allege delay are therefore subject to dismissal as unsupported by sufficient evidence pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, it is **ORDERED** that the complaints be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(B) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: March 14, 2017