

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-16-90108  
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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 is violating his due process rights by holding a competency hearing, that the judge is biased, and that the judge has refused to file or to address several of the complainant’s motions and other pleadings. In correspondence supplementing his complaint, the complainant further alleges that the subject judge has discriminated against him based on his sexual orientation, that the judge prejudged the issue of his competence, that the judge has a conflict of interest, and that the judge is colluding with his attorney.

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 is the defendant in a criminal action pending before the subject judge. The complainant pleaded guilty, and the subject judge sentenced him and entered judgment, but the court of appeals vacated the judgment on the ground that the guilty plea was invalid. The complainant then chose to proceed to trial. Over the complainant’s opposition, the subject judge granted the government’s motion to continue trial and for a psychiatric examination. After the examination was completed, the subject judge conducted a hearing on the complainant’s competence to stand trial and received post-hearing briefs from the parties. The complainant then moved, through counsel, for a second opinion as to his competence. The subject judge granted that motion and a subsequent motion for an additional hearing on the matter.

To the extent that it is based on the subject judge's decision to order a psychiatric examination and hold a hearing on the complainant's competence, this complaint is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the subject judge's rulings. See also 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's decisions 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).

To the extent that it alleges bias, discrimination, collusion, and conflict of interest on the part of the subject judge, the complaint is wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). See also 28 U.S.C. § 352(b)(1)(A)(iii). With respect to the allegation of sexual-orientation-based discrimination, the complainant points to the transcript of his sentencing hearing, but the transcript reflects only that the subject judge conferred with a probation officer off the record after admonishing the complainant to "[s]tay out of the porn industry." The complainant's claim that the off-the-record discussion was about his sexual orientation, and his speculation that the subject judge increased his sentence on that basis, are without support in the record.

To the extent that it alleges prejudgment of the complainant's competence to stand trial, the complaint is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). As the complaint alleges, the subject judge stated at the sentencing hearing that the complainant's "wiring is off, completely." The subject judge also referred to the complainant's "very serious mental health issues." These comments, made in the sentencing context more than eighteen months before the government moved for a psychiatric examination, are insufficient to raise an inference of misconduct. Far from prejudging the issue of the complainant's competence, the subject judge ordered an examination by an expert, held a hearing, received briefs from the parties, then ordered a second examination and a second hearing.

Finally, to the extent that it is based on the subject judge's alleged refusal to file or to address certain motions and other submissions, the complaint is likewise subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). The record does not reflect any refusal to consider motions filed by the complainant's counsel, and the subject judge could properly decline to consider any pro se submissions, particularly while the complainant's competence remains at issue. In these circumstances, no inference of misconduct can be drawn.

For these reasons, 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) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: May 25, 2017