

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90021
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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 complaint alleges that the subject judge committed misconduct and evidenced racial bias in rulings made during the course of a criminal trial, sentencing, and subsequent post-conviction proceedings.¹ In support of these allegations, the complainant attaches to and incorporates into his complaint a copy of the motion to recuse that he filed in connection with a Federal Rule of Civil Procedure 60(b) motion, which the subject judge denied. In that motion, the complainant alleged that the subject judge had demonstrated his bias by imposing a sentence more than twice as long as that agreed to in the plea deal from which the complainant subsequently withdrew, and by denying his 28 U.S.C. § 2255 motion to vacate. The complaint also stated there that those and other decisions made by the subject judge over the course the underlying proceedings “may very well have been motivated based on [the complainant’s] African American race.”

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

¹ The complainant’s charge that the Assistant United States Attorney who prosecuted the criminal case was complicit in this alleged misconduct is not cognizable in judicial conduct proceedings, see Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings, and thus need not be addressed herein.

misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Challenges to the merits of a judge’s rulings in underlying proceedings, including rulings of motions to recuse, are outside the scope of judicial-misconduct proceedings unless they are alleged to be the result of an improper motive. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Although the complainant conjectures in his motion to recuse that the many of the subject judge’s earlier decisions “may very well have been motivated” by race, any allegation of racial bias that might be gleaned from this statement is wholly unsupported by any evidence, and is thus due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. A complainant may not avoid Rule 11(c)(1)(B) dismissal by simply alleging an improper motive without any supporting evidence. The complainant’s transparent attempt to disguise his challenges to the merits of the subject judge’s underlying decision fails, and thus are due to be dismissed 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.

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: September 10, 2018