

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

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90092
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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 relates to the subject judge’s handling of three proceedings: a criminal action against the complainant, a civil action for recovery of the complainant’s resulting debt to the government, and a proceeding under 28 U.S.C. § 2255 for relief from the complainant’s sentence. According to the complainant, the subject judge ignored legal rules and failed to prevent prosecutorial misconduct and ineffective assistance of counsel in the criminal case. The complainant further alleges that the subject judge improperly issued an arrest warrant for violations of conditions of supervised release and then harassed and intimidated the complainant both before and during the hearing on the alleged violations. With respect to the civil case, the complainant alleges that the subject judge erred in denying her motions for a stay and for a change of venue. Finally, with respect to the § 2255 proceeding, the complainant alleges undue delay.

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 subject judge was assigned to the three legal proceedings noted above. The complainant pleaded guilty in the criminal case, and the subject judge sentenced her to a below-guidelines term of imprisonment, a period of supervised release, and restitution. The government later sought to enforce the sentence of restitution by filing applications for writs of garnishment and execution in a new civil action. The complainant moved for a stay and for a change of venue, but the subject judge denied her motions.

After the complainant completed her term of imprisonment, the subject judge issued a warrant for her arrest for violations of conditions of supervised release. A magistrate judge ordered that the complainant be temporarily detained and then, after a hearing, that she be released on bond. The complainant pleaded guilty, and the subject judge sentenced her to time served and a reinstated period of supervised release.

Meanwhile, the complainant had filed a motion to vacate her sentence under 28 U.S.C. § 2255. About six months later, the complainant filed a motion for a hearing. About seven months after that, the complainant filed a motion to disqualify the subject judge. The subject judge then denied those two motions and ordered the complainant to file an amended § 2255 motion on the official form.

To the extent that this judicial-misconduct complaint is based on alleged errors in the subject judge's rulings—including the acceptance of the complainant's guilty pleas, the imposition of sentence, the issuance of the arrest warrant, and the denial of the complainant's motions—it is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the subject judge's decisions. 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).

To the extent that the complaint is based on alleged harassment and intimidation, it is subject to dismissal under Rule 11(c)(1)(C) because the allegations are entirely unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The subject judge's alleged instruction to defense counsel to "tell your client to stop filing letters" does not reflect an effort to harass or intimidate the complainant and does not suggest that the subject judge is biased.

Finally, an allegation of delay on the part of a subject judge does not allege cognizable misconduct unless the allegation concerns an improper motive or habitual delay in a significant number of cases. Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complaint here does not allege an improper motive or habitual delay. With respect to the allegation of delay, therefore, the complaint is subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

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)(A), (B) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: February 6, 2019