

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-14-90053/59
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M E M O R A N D U M

These complaints of judicial misconduct were filed by a pro se prisoner against the district judge and now-retired magistrate judge to whom the complainant's 42 U.S.C. § 1983 action was assigned. In his initial complaint, he charged that a number of the motions that he filed were ignored by the subject magistrate judge. In a supplement to the initial complaint, complainant added the district judge who presided over his § 1983 action and challenged several of the judge's rulings, including one dismissing several defendants from the case and one that denied several of complainant's motions.

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.

With respect to the subject magistrate judge, the complaint will be dismissed pursuant to Rule 11(a)(3) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings because the judge has retired, rendering the judicial complaint process nugatory. Even were the subject magistrate judge still reachable by the judicial complaint process, however, the complaint would still be subject to dismissal. A cursory review of the docket sheet in complainant's underlying § 1983 case shows that all of complainant's motions were disposed of by the district judge. In his reply to the complaint, the subject magistrate judge states that none of those motions were referred to him. Assuming that the subject magistrate judge did fail to acknowledge or even ignored the complainant's motions, his conduct would not be "prejudicial to the effective and expeditious administration of the business of the courts," and is thus not cognizable in judicial

complaint proceedings. See Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see *also* 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant's challenges to the subject district judge's rulings in the underlying case are appropriately dismissed as directly related to the merits under 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.

For these reasons, the complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(a)(3), (c)(1)(A) & (B), and (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: October 15, 2014