

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90100
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the magistrate judge who was assigned to his civil rights litigation. The complaint alleges that the magistrate judge “suppress[ed] favorable evidence,” either because of a financial interest in the litigation or in retaliation for an earlier complaint of judicial misconduct filed by the complainant.

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.

An initial review of the district-court record reveals that in July 2014 the magistrate judge issued a report and recommendation that the district court grant the defendants’ motion for summary judgment. According to the complainant, the magistrate judge took this action despite the existence of documentary evidence supporting the complainant’s claims. The complainant does not contend that this evidence was presented to the magistrate judge, but rather that he requested the documents from third parties, apparently without success.

Insofar as it is based on the substance of the magistrate judge’s report and recommendation, this complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). A challenge to the merits of the magistrate judge’s determinations, including the judge’s evaluation of the evidence, 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).

Moreover, to the extent that the complaint alleges financial interest or a retaliatory motive, the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The record is devoid of evidence to support these allegations.

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

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

Date: December 22, 2014