

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90113
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a prisoner against the magistrate judge who was assigned to a 42 U.S.C. § 1983 action that the complainant brought against various state prison officials. This is the fifth judicial complaint that the complainant has filed this year. He contends in the current complaint that the subject magistrate judge failed to protect him against various depredations by the defendant prison officials. He points to comments made during a scheduling conference, where the subject judge stated that he would not deal with any allegations of retaliation by the defendants that occurred during the litigation. The complainant goes on to detail numerous allegations of retaliation that had occurred after that time and contends that the magistrate did nothing to protect him.

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.

The telephone conference at which complainant alleges that the subject judge made the statement in question was not recorded or transcribed. In a subsequent letter to the district judge to whom the case was assigned, in which the complainant alleged a violation of a previously issued injunction, the complainant informed the court that the above-mentioned conference “went well.” At no point in that letter or at any other point during the proceedings does the complainant refer to the allegedly offending remarks about which he now complains. In any event, even assuming that those remarks were made by the subject judge, they do not constitute conduct that is “prejudicial to the effective and expeditious administration of the business of the courts,” nor show “a mental or physical disability resulting in inability to discharge the duties of judicial office.” See Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

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

Date: January 13, 2015