

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90128
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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 litigant against the magistrate judge who was assigned to the complainant's civil-rights action filed under 42 U.S.C. § 1981. The complaint alleges that the magistrate judge has acted unfairly and unreasonably in a number of ways, including (1) hearing pretrial matters without the complainant's consent; (2) violating rules of civil procedure; (3) issuing arbitrary and irrational orders, including denying the complainant's motions for a protective order and for appointment of counsel and sanctioning the complainant; (4) engaging in ex parte communications with opposing counsel; and (5) having a direct personal interest in the complainant's civil-rights action.

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.

An initial review of the district-court record reveals that the complainant filed her civil-rights action in September 2013. The magistrate judge granted the complainant's motion for leave to proceed in forma pauperis and issued a report and recommendation that certain claims be dismissed and other claims be permitted to go forward. The district court adopted the report and recommendation. The magistrate judge later recommended dismissal of the claims against one defendant when, after the magistrate judge twice granted the complainant's motions to reissue summons and once extended the time for service, the complainant failed to effect service on that defendant. Thereafter, the magistrate judge granted in part and denied in part the remaining defendant's motion to compel discovery; granted that defendant's motions *in limine*, for

sanctions, and to deem certain matters admitted; and denied the complainant's motions for recusal, to quash a subpoena *duces tecum*, and for a protective order. The litigation remains ongoing.

To the extent that this complaint is based on the magistrate judge's orders and other rulings, it 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 a judge's rulings is outside the scope of judicial-misconduct and judicial-disability 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).

To the extent that the complaint alleges *ex parte* communication and partiality based on personal interest, it is subject to dismissal under Rule 11(c)(1)(C) & (D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complaint sets forth no facts, and the record contains no evidence, to support such allegations. Allegations of a friendship between the magistrate judge and a non-party to the litigation do not support an inference that misconduct has occurred.

For these reasons, the 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: February 4, 2015