

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-14-90134  
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**M E M O R A N D U M**

This complaint was filed by the distaff member of a troubled marriage that was dissolved after protracted and acrimonious divorce proceedings. The complainant alleges that after her ex-husband was ordered to remove himself from the marital home, she received a call from the subject judge's brother, with whom the ex-husband then lived. The brother told the complainant to come to his home "if she wanted to ensure [that her ex-husband] would not return home." When she arrived at the brother's home, the subject judge and another unidentified male were also there, along with the judge's brother. Complainant alleges that the subject judge's brother told her that her husband could "do anything he wanted, including return[ing] to the home." While the brother was telling the complainant this, she alleges, the subject judge and the other unidentified man stood in the background shooting guns. When the subject judge turned and smiled at her, the complainant got into her vehicle and fled. She also alleges that her former husband testified in a deposition that the subject judge was "assisting him with a retaliation against [her]." The complainant also notes that her ex-husband was represented in the divorce proceedings by the subject judge's former law firm, and that the subject judge swore in the state judge who originally presided over the divorce proceedings when the later judge was subsequently elevated to the state court of appeals.

The Chief Judge may, under Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, conduct a limited inquiry to assist in the determination of the appropriate action to take on a judicial complaint. That limited inquiry may include oral or written communication with the complainant, subject judge, or any other individual who might have knowledge of the matter. *Id.*; *see also* 28 U.S.C. § 352(a). When a limited inquiry "demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence," the chief judge may dismiss the complaint. 28 U.S.C. § 352(b)(1)(A) & (B).

As part of the limited investigation authorized by 28 U.S.C. § 352(a), the subject judge has been invited to respond to the complaint. He has done so, and has also submitted the sworn affidavits of those present on the day in question, including his own. The judge states that he was able to confirm, after receiving a copy of the complaint, that the complainant's then-estranged husband did in fact live with his (the subject judge's) brother at the time. Although he had seen the complainant's ex-husband at his brother's house on several occasions, the judge was not aware that the ex-husband was actually living there. On the day in question, the judge was at his brother's house target shooting when a vehicle pulled into the driveway some distance away from where he was shooting. His saw his brother walk over to the vehicle, after which it pulled away, but no one exited the vehicle, and the judge could not see and did not know who was in the vehicle. It was only after the vehicle left that the judge learned that it had contained the complainant. He states that his brother categorically denied that he had summoned the complainant to his house on the day in question. The judge also stated that he was unaware of anything that transpired during the complainant's divorce action. He recalled that the complainant's ex-husband had called him "quite some time" before the incident in question and asked him about an alleged fraud that had been perpetrated by the complainant, at which point the judge advised him to contact local law enforcement. He notes that he has not been associated with the law firm representing the ex-husband for over 32 years.

The judge's brother states in his sworn affidavit that he did not invite the complainant to his residence on the day in question, and her arrival was unannounced and unexpected. He asked her to leave and she did. The complainant's ex-husband states in his sworn affidavit that he at no time asked the subject judge to intercede in any way in his divorce proceedings. The state judge who originally presided over the divorce proceedings stated in his sworn affidavit that the subject judge did not contact him, discuss with him, or attempt to intercede in any way in the divorce proceedings involving the complainant.

A limited investigation pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and 28 U.S.C. § 352(a) having shown that the allegations in the complaint are conclusively refuted by all of the available objective evidence, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(B).

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

Date: November 10, 2015