

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90009/10
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M E M O R A N D U M

This complaint of judicial misconduct was filed by the defendant in an ongoing criminal prosecution. He names the magistrate judge who determined that his criminal case was related to a previously filed case, and the district judge to whom the case was ultimately assigned as a result of that finding. He argues that the assignment violated local rules, and that the district judge violated the Code of Judicial Conduct by asking the Assistant United States Attorney who had prosecuted the previous case to bring to the magistrate judge's attention, in event any subsequent indictments were filed, the possibility of the new case being related to the old one.

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 complaint is subject to dismissal as directly related to the merits of the named judges' decisions in complainant's underlying criminal proceedings pursuant to 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. Although the assignment of complainant's case to the subject district judge is not a substantive ruling, "[a]ny allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related." See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Commentary to Rule 3. The complainant alleges nothing more than an incorrect interpretation of the local rules governing case assignment, and the decision to assign the case as related is thus not a proper subject of a complaint of judicial misconduct. See Rule 3(h)(3)(A). The Judicial

Council is not a court and has no jurisdiction to review the named judges' rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

For these reasons, the complaint will be dismissed pursuant to 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.

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

Date: April 1, 2015