

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-15-90030  
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**M E M O R A N D U M**

This complaint of judicial misconduct was filed by a death-row prisoner against the magistrate judge assigned to his habeas corpus proceeding. The complaint alleges that the magistrate judge is biased against the complainant and has a conflict of interest because the magistrate judge served on an American Bar Association committee on which the complainant's current attorney and one of his former attorneys also served. As evidence of the magistrate judge's alleged bias, the complaint cites the judge's denial of the complainant's motions to discharge and replace his current attorney and the judge's denial of authorization for service on the complainant by mail rather than on his attorney by ECF. The complaint also alleges that the magistrate judge instructed the clerk of court to withhold service of a report and recommendation for the purpose of impeding the complainant's timely filing of objections.

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 the complainant filed his petition for a writ of habeas corpus in 1994. The district court twice granted relief from the complainant's death sentence, but neither grant of relief withstood appellate review. The complainant's counseled motion and subsequent pro se motion for authorization to file a second or successive habeas petition were also unsuccessful.

The district court appointed the complainant's current attorney in 2010. Notwithstanding that appointment, the complainant filed a series of pro se papers beginning in 2013. First, he moved for relief from the district court's judgment. He also moved to discharge his attorney. While these motions were pending, the case was reassigned to a different district judge and, for the first time, to the magistrate judge who is the subject of this complaint. The magistrate judge denied the motion to discharge the complainant's attorney and issued a report recommending that the district court deny the motion for relief from judgment. The magistrate judge also denied the complainant's motion for authorization of service by mail and his additional motion to replace his attorney. The complainant objected to each of the magistrate judge's orders, but he did not file timely objections to the report and recommendation. Instead, claiming that he had not been served with a copy of the report and recommendation, the complainant moved for additional time to object. The magistrate judge denied that motion, and the district court adopted the report and recommendation and denied the motion for relief from judgment. The district court also overruled the complainant's objections to the magistrate judge's orders.

The complainant, still acting pro se, moved for recusal of the magistrate judge. The magistrate judge struck that motion and the complainant's subsequent pro se filings because the complainant is represented by counsel.

To the extent that it is based on the magistrate judge's orders, including the order striking the complainant's recusal motion, this complaint is subject to dismissal under Rule 11(c)(1)(B). See also 28 U.S.C. § 352(b)(1)(A)(ii). Challenges to a judge's substantive and procedural rulings are outside the scope of judicial-misconduct proceedings. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council does not have jurisdiction to review any such rulings. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

To the extent that it is based on the alleged withholding of service of the magistrate judge's report and recommendation, this complaint is subject to dismissal under Rule 11(c)(1)(C) as wholly unsupported by the record. See also 28 U.S.C. § 352(b)(1)(B). The record clearly shows that the report and recommendation was electronically docketed on the date of its entry and thus was available to the complainant's counsel on that date.

Finally, to the extent that it alleges bias and conflict of interest, this complaint is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). The fact that the magistrate judge once served on a committee with the complainant's former and current counsel is insufficient to raise an inference that misconduct has occurred.

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

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

Date: June 29, 2015