

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-15-90035
*
*
*
*

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 his diversity action in the district court. That action was initially dismissed for failure to meet the jurisdictional amount, but was reversed and remanded by this court. It is currently pending in the district court before a different district judge, but the same magistrate judge who is the subject of this complaint. The complainant charges that the subject judge “simply conjured up facts and law out of thin air” in her report recommending dismissal of his case. He argues the subject judge’s bias against him is evident from her writings and that the court of appeals’ decision reversing and remanding “support[s] . . . the strength of [his] argument.” He also argues that the December 31 date of the challenged report and recommendation—which he refers to as a “Biden date”—somehow shows that the subject judge dismissed his case only to control her calendar.

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 gravamen of the complaint is the complainant’s dissatisfaction with the subject judge’s Report and Recommendation. Whether or not that decision was erroneous, the decision of a judge in an underlying action is not the proper subject of a complaint of judicial misconduct. 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 the named judge’s rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). This complaint is therefore appropriately dismissed, in part, 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.

That part of the complaint that charges the subject judge with recommending dismissal of the complaint in order to control her calendar, which is based on the date that document was entered on the docket, is frivolous and/or lacks sufficient evidence from which an inference that misconduct has occurred can be made. Therefore, that part of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 11(c)(1)(C) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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), (C) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: November 3, 2015