

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90046/47
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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 district judge and magistrate judge who were assigned to his civil actions for wrongful foreclosure and for correction of military records. The complaint alleges that the subject judges violated the complainant's constitutional rights, the Federal Rules of Civil Procedure, and the "Judiciary Rules." More particularly, the complaint alleges bias against pro se litigants and a conflict of interest in the wrongful-foreclosure 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.

A review of the district-court record reveals that the complainant's wrongful-foreclosure action was removed from state court and assigned, after two transfers, to the subject district judge. The district judge granted the defendants' motions to dismiss, and the court of appeals affirmed the judgment. Almost one year after the court of appeals issued its mandate, the complainant moved for relief from the judgment. The district judge denied the motion.

While the wrongful-foreclosure defendants' motions to dismiss were pending in the district court, the complainant filed his military-records action, which was assigned initially to a different district judge and referred to the subject magistrate judge. The magistrate judge recommended granting the defendants' motions to dismiss, and the initially assigned district judge adopted that recommendation in part. The case was

then transferred to the subject district judge. The complainant filed a motion for recusal of the district judge and the magistrate judge. The action remains pending.

To the extent that the allegations are based on the subject judges' procedural or substantive rulings, this complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's decisions is outside the scope of judicial-misconduct 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 bias and conflict of interest, the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The record contains no evidence of bias on the part of either judge. Nor is there evidence of a conflict of interest. The complainant's evidence, attached to his motion for recusal in the military-records action, establishes that the district judge was a partner in a law firm that later represented, in unrelated litigation, one of the wrongful-foreclosure defendants. But the judge's former law firm did *not* represent that defendant (or any other defendant) in the wrongful-foreclosure action that was before him. No inference of misconduct can be drawn on this record.

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: August 28, 2015