

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90087/88
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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 a district judge and a magistrate judge who were assigned to proceedings in which the complainant has an interest. The complaint alleges that the magistrate judge improperly refused to recuse herself from three proceedings and that the district judge improperly dismissed an appeal from a bankruptcy court's judgment.

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 magistrate judge was assigned to a civil action and a bankruptcy appeal in which the complainant has an interest. In each case, a district judge dismissed the action and denied a motion to recuse the magistrate judge. (The complaint identifies a third proceeding in which the magistrate judge allegedly refused to recuse herself, but it is a bankruptcy court proceeding in which the magistrate judge has no involvement.) The bankruptcy appeal was dismissed by the subject district judge.

This complaint is subject to dismissal in part because it is directly related to the merits of the judges' decisions. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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 it is based on the magistrate judge's alleged failure to recuse herself from a bankruptcy court proceeding, the complaint is subject to dismissal as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

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

Date: November 10, 2015