

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

In re:  
Complaints of Judicial Misconduct

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\*Nos. 06-15-90102/103  
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**M E M O R A N D U M**

These complaints of judicial misconduct were filed by a pro se litigant against the district judge and magistrate judge who were assigned to his civil action. The complaints allege that the subject judges were biased in favor of “well credentialed” defense counsel and against the complainant, a pro se plaintiff. As evidence of the magistrate judge’s alleged bias, that complaint cites her refusal to clarify the schedule during a telephonic conference, her postponement and eventual cancellation of a motion hearing, and her orders striking certain pleadings and denying a discovery motion. As evidence of the district judge’s alleged bias, that complaint cites language in his order granting the defendant’s motion for judgment on the pleadings and his failure to correct the magistrate judge’s alleged errors.

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, after conducting a telephonic scheduling conference, entered a detailed scheduling order. The magistrate judge then set and reset a hearing on the complainant’s motion for a preliminary injunction, but she later cancelled the hearing and notified the parties that the motion would be decided without oral argument. The magistrate judge struck several out-of-rule pleadings that the complainant filed, denied the complainant’s motion to compel discovery, and recommended that the district judge deny the preliminary-injunction motion and grant the defendants’ motion for judgment on the pleadings. The district judge adopted these recommendations and dismissed the action.

These complaints are subject to dismissal in part because they are 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 they are not directly related to the merits of the judges' decisions, the complaints are 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. The allegation of bias finds no support in the magistrate judge's alleged refusal to clarify the schedule during a telephonic conference, which was followed by a detailed written scheduling order, or her determination that no hearing was necessary on the complainant's preliminary-injunction motion. Nor is the allegation of bias supported by the district judge's characterization of the magistrate judge's report and recommendation as "well-reasoned" or his quotation of case law using the phrase "threadbare recitals of the elements." In short, nothing in the record suggests that either judge exhibited bias against the complainant or in favor of defense counsel.

For these reasons, the complaints 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: January 20, 2016