

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

In re:  
Complaint of Judicial Misconduct

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\*Nos. 06-15-90112/113  
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**M E M O R A N D U M**

This complaint of judicial misconduct was filed by a non-litigant against the district judge and magistrate judge who were assigned to a civil action alleging violations of the Fair Debt Collection Practices Act. The judicial-misconduct complaint alleges that the subject judges “abused their judicial offices”; exhibited bias against, denied due process to, and retaliated against the pro se plaintiff in the civil action; and exhibited bias in favor of and conspired with the defendant and its counsel. The complaint also alleges that the magistrate judge “use[d] personally derogatory remarks.”

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 plaintiff filed his civil action (to which the complainant here was not a party) in February 2014. The district judge referred all pretrial matters to the magistrate judge. Adopting a report and recommendation of the magistrate judge, the district judge granted the plaintiff’s first motion to amend his complaint but denied a second one. The magistrate judge granted a defense motion to compel discovery, and the district judge affirmed that ruling. Without obtaining leave, the plaintiff filed another amended complaint, and the magistrate judge struck that pleading. Finally, the magistrate judge recommended granting a defense motion for dismissal as a sanction for discovery violations, and the district judge adopted that recommendation and dismissed the action.

The allegations of this judicial-misconduct complaint are based primarily on the recommendations and rulings of the subject judges. To that extent, the complaint is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the judges' decisions. 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).

The complaint characterizes specific language from one of the magistrate judge's reports as allegedly "[i]mproper conduct." But the quoted passages consist of the magistrate judge's reasonable interpretations of the record or, in some cases, mere recitations of the evidence, including evidence of the plaintiff's own statements. These passages do not constitute misconduct, and the allegations relating to them are thus subject to dismissal under Rule 11(c)(1)(A).

Finally, the complaint's allegations of conspiracy, hostility, and retaliation, to the extent that they are not based on the merits of the judges' decisions or on the language used by the magistrate judge, are subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). There is no evidence supporting the allegations.

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

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

Date: August 17, 2016