

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90041
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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 magistrate judge to whom the complainant's ongoing civil action was assigned for pretrial supervision. He claims that the subject magistrate judge has exhibited personal bias against him and treated him in a hostile and egregious matter. In support, the complainant alleges that the subject judge scolded and threatened him with sanctions for not following court rules; questioned the merits of his civil suit; refused to answer his legal questions; refused to appoint counsel; ordered that unauthorized pleadings be stricken; warned him against name-calling; reminded him of the court's power to dismiss the complaint after he had refused a settlement offer; and noting in a written order that the complainant had continuously broken court rules.

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.

To the extent the complainant is challenging the magistrate judge's rulings and management of pretrial proceedings, those challenges must be dismissed as merits-related 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. Such decisions are not the proper subject of a complaint of judicial misconduct. 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 rulings by a judge, or to grant the relief that may be requested in the

underlying civil actions. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Complainant's allegations of hostile or egregious behavior evidencing personal bias on the part of the subject judge are subject to dismissal as lacking sufficient evidence that misconduct has occurred pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Taking all of complainant's specific factual allegations regarding the subject judge's on-record statements as true, he does not show that the subject judge was biased or that he acted in a hostile or egregious manner. The complainant freely admits that he violated court rules on numerous occasions, and the imposition of sanctions, much less the threat thereof, was well within the magistrate judge's discretion. Likewise, the subject judge acted well within his discretion in asking the complainant questions about the merits of the case, refusing to give him legal advice, and warning him against name calling. In light of the provocative comments made by the complainant throughout the proceedings, to which he freely admits—"I can see that I will not receive justice in this courtroom"; "I work in a prison with murders [sic], rapist [sic], and thieves, but they have more integrity in telling the truth than [counsel for the defendant]"; "is this the United States of America? Do we follow the laws of the United States of America?"—the subject judge showed appropriate restraint. Because none of the remarks cited by the complainant even come close to "the sort of 'deep-seated and unequivocal antagonism' that may constitute misconduct," see *In re Doe*, 640 F.3d 861, 863 (8th Cir. Jud. Council 2011) (quoting *Liteky v. United States*, 510 U.S. 540, 556 (1994)), these allegations are due to be dismissed under 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.

For these reasons, this 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: October 15, 2014