

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-14-90043/49
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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 magistrate judge who was assigned to her pending legal action in the district court, and the out-of-state district judge who was assigned to preside over her case after the originally assigned judge recused. She contends that the subject district judge acted improperly by denying a motion to hold two of the defendants in contempt. She alleges that the subject magistrate judge had a conflict of interest because one of the defendants was his former law clerk, and, presumably, should have recused himself.

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.

The legal proceedings that underlie these complaints started as a state court domestic relations matter. Dissatisfied with the outcome of a custody dispute and a domestic violence charge against her ex-spouse, the complainant brought two actions in the United States District Court, one against a number of state court judges and another against various state court employees. Although the two cases were initially filed in different divisions and assigned to different judges, the latter case was subsequently transferred to the judge to whom the former had been assigned. That judge subsequently recused himself, citing his professional and social relationships with the defendant state court judges, and both cases were ultimately assigned to the subject district judge who, before he took inactive senior status, sat in a different state. Although no magistrate judge had been referred to the case when it was initially opened, the subject district judge later

referred the complainant's motion to be allowed to file electronically to the subject magistrate judge. The complainant sent several letters to the chief judge of the district complaining about the referral, citing the past professional relationship between the magistrate judge and one of the defendants in the related case that was subsequently transferred. The subject magistrate judge denied the complainant's motion to file electronically, and, in a separate order issued the same day, recused himself from the case.

Complainant's allegations against the subject district judge are no more than an expression of her dissatisfaction with his ruling on a single motion, and are therefore appropriately dismissed 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. To the extent complainant argues that the subject magistrate judge should have recused before, instead of after, ruling on her motion for permission to file electronically, that allegation is also subject to dismissal as merits related. Such decisions are not the proper subject of a complaint of judicial misconduct. 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 the named judge's rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

For these reasons, the complaints will be dismissed 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.

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

Date: October 16, 2014