

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-14-90074/75
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a non-party against the magistrate judge and district judge assigned to a breach-of-contract action involving a defaulted home loan. The complainant alleges fraud, civil-rights violations, and bias, as purportedly evidenced by the subject judges' rulings in the contract action and in prior cases.

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 "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred." Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In part, this complaint is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the subject judges' rulings in the contract action. *See also* 28 U.S.C. § 352(b)(1)(A)(ii). The complainant contends that the district judge improperly granted the plaintiff's motion for summary judgment without hearing testimony, that the summary judgment decision was "against the preponderance of the evidence and against legal preceden[t]," that the judges "quash[ed]" the defendant's "right to discovery," and that the judges wrongly denied the defendant's motions to recuse and for leave to appeal in forma pauperis, as well as the complainant's and others' motions to intervene. The complainant characterizes these rulings as "fraud upon the court" and cites them, together with rulings in other, unidentified cases, as evidence of bias. But the essence of the allegations is that the rulings are incorrect, and, to this extent, the complaint does not allege cognizable misconduct. *See* Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Some of the complainant's allegations of bias are based not on the subject judges' rulings, but on their employment before becoming judges. To this extent, the complaint is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). Allegations that the judges worked for law firms that "cater almost exclusively" or "primarily" to "the interests of banks and financial institutions," but that were not involved in the contract action at issue here, are insufficient to raise an inference of misconduct. The same is true of an allegation that the magistrate judge's former law firm has an office at an address once shared by the attorney for the defendant in the contract action.

The complainant's allegation of bias based on the district judge's ownership of mutual funds is also subject to dismissal under Rule 11(c)(1)(D). According to the complainant, the attorneys for the plaintiff in the contract action are "affiliated with" a subsidiary of the mutual fund company. This unsupported allegation of a link between the attorneys for a party and a corporation in which the district judge is not alleged to have a direct financial interest is insufficient to raise an inference of misconduct.

Finally, the complaint is subject to dismissal in part under Rule 11(c)(1)(C). See also 28 U.S.C. § 352(b)(1)(A)(iii). The complainant alleges that the subject judges committed "civil rights violations" in the contract action and "humiliated and abused" pro se litigants in other, unidentified cases. These allegations are not supported by any facts and must therefore be regarded as frivolous.

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 30, 2014