

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90081
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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 who presided over the complainant's underlying Title VII action against his municipal employer. The subject magistrate judge, who presided by consent pursuant to 28 U.S.C. § 636(b), ultimately granted summary judgment for the defendants. The complainant now alleges that the subject judge should have recused due to a conflict of interest; displayed improper court room decorum by treating the complainant in an egregious and hostile manner; and had ex parte discussions with the defendant's counsel.

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 complainant alleges two conflicts of interest on the part of the subject judge. He alleges that her nephew worked for a law firm that represented one of the defendants, and that her son worked for a law firm that had a long history with one of the municipal defendants, but which did not make appearance in the complainant's case. The complainant admits that the subject judge disclosed her first conflict, that he assumed that it would not effect her ability to be fair and impartial, and that he did not move to recuse on that basis. The complainant argues that the subject judge should have disclosed her second conflict, and that her failure to do so was actionable misconduct.

Complainant's first conflict-of-interest allegation is subject to dismissal as directly related to the merits of the subject judge's decision in complainant's underlying case 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. A mere allegation that a judge should have recused, as opposed to an allegation that a judge deliberately failed to recuse for illicit reason, is merits related and not cognizable in a complaint of judicial misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, Judicial Conduct and Disability Act Study Committee, Sept. 2006, p. 146. The complainant did not then and does not now allege any illicit circumstances that motivated the presiding judge's failure to recuse. Here, moreover, the subject judge disclosed the conflict, and the complainant did not, at the time of that disclosure, move to recuse.

The second conflict of interest identified by the complainant does not allege any actionable misconduct. Taken as true, the subject judge's son's employment with a law firm that had represented one of the defendants in other actions, but was not representing that defendant below, does not constitute a conflict of interest. Because the complaint thus fails to allege that the subject judge has engaged in any conduct prejudicial to the effective and expeditious administration of the business of the courts, it is appropriately denied under 28 U.S.C. § 352(b)(1)(A)(i) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's allegations that the subject judge treated him in a hostile and egregious manner and had ex parte conversations with the defendant are not supported by a factual foundation. Although the complainant points to a transcript that he appended to his complaint as the evidentiary support for these arguments, nothing in that transcript even remotely supports either allegation.¹ Under these circumstances, these allegations must be dismissed as lacking any factual foundation pursuant to 28 U.S.C. § 352(b)(1)(B) and Rule 11(c)(1)(G) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii) & (B) and Rules 11(c)(1)(A), (B) & (G) of the Rule for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: June 29, 2015

¹It is noted that several pages are missing from that transcript: the complainant has been given several opportunities to send a complete copy, but has not done so.