

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90089
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M E M O R A N D U M

This complaint of judicial misconduct was filed by two pro se litigants against the district judge who dismissed their Title VII action for failure to prosecute. Their complaint is based on that dismissal, which they blame on an attorney to whom the subject judge referred them to discuss possible pro bono representation. They allege that that attorney advised them not to show up at their scheduled depositions, and that she would inform the defendants' attorneys. The subject judge ultimately granted the defendants' motion to dismiss for failure to prosecute, which was based on the complainants' failure to show up for their scheduled depositions without informing the court or the defendants. The complainants now argue that the subject judge thus treated them "in a demonstrably egregious and hostile manner by using another lawyer to mislead the[m] to do nothing in the case." They also claim that the subject judge "could be using his office to obtain special treatment for externs and his son who worked, works or might want to return to work at [the law firm that represented the defendants]." Finally the complainants challenge the subject judge's denial of their motion to recuse, which was based on the same arguments now made in this judicial complaint.

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.

All of the complainants' allegations are directed at rulings made by the subject judge. Their allegations regarding the misleading advice given by an attorney who did not represent them is a thinly veiled challenge to the court's dismissal of their Tile VII action.

Although these allegations are not reviewable because they are directly related to the merits, see 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings, it should be noted here that before the judge dismissed their action, he gave the complainants 14 days to provide evidence that the lawyer did in fact mislead them, which they failed to do. It should also be noted that they had already missed one round of scheduled depositions before they saw the lawyer and had been warned of the consequences of doing so again.

Those allegations directed at the subject judge's failure to recuse are likewise merits related. The complainants filed two motions to recuse in the district court, both of which contained identical arguments to the ones made in this judicial complaint, and both of which were addressed and denied in connection with the proceedings below. A judge's refusal to recuse is likewise 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.

For these reasons, the complaint 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: December 15, 2014