

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-14-90136/137
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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 prisoner against the district judge and magistrate judge who were assigned to his civil-rights action. The complaint alleges that the subject judges exposed him to retaliation and harassment by prison guards by failing to address his motions to preserve his property and safeguard his right to prosecute his lawsuit.

After conducting an initial review, the chief judge may dismiss a misconduct 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”; (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.

An initial review of the district-court record reveals that the complainant filed his civil-rights action in July 2014. In October and November 2014, he filed two motions to “preserve [his] property” and “safeguard [his] right to prosecute” the action. Those motions were denied after the filing of this judicial-misconduct complaint.

This complaint is subject to dismissal under Rule 11(c)(1)(B) because it is based on the subject judges’ rulings—or their failure to rule more expeditiously—on his motions. See also 28 U.S.C. § 352(b)(1)(A)(ii). A challenge to a judge’s ruling on a motion is outside the scope of judicial-misconduct and judicial-disability proceedings. 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 any ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

Moreover, the subject district judge is now deceased. With respect to that judge, the complaint is subject to dismissal under Rule 11(a)(3) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings because the judicial complaint process is nugatory as against him.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(a)(3), (c)(1)(B) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: February 24, 2015