

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90057
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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 district judge who was assigned to and dismissed at least six separate civil actions. It is similar to an earlier complaint brought by the same complainant in that it again complains about the rulings of the subject judge and attributes them to various conflicts of interest which should have required the judge's recusal from all of the underlying actions. The complainant adds a new conflict to her list in the instant complaint, contending that the subject judge had ties to the law firm that had represented one of the government defendants in at least some of the underlying actions. The "ties" that give rise to the alleged conflict, according to the complainant, are the facts that the subject judge previously presided over a case in which the law firm was a party and once gave a presentation at a conference at which a partner in the law firm also spoke.

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's conflict-of-interest allegations are frivolous. The law firm was not a party to the case cited in the complaint, but rather represented a party. And lawyers and judges routinely attend and speak at the same conferences. The complainant is again attempting, under the guise of an allegation of a conflict of interest, to challenge rulings made by the subject judge below. This complaint is therefore subject to dismissal as directly related to the merits of the named judge's decisions in the underlying proceedings 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. 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. A simple allegation that a judge should have recused is merits related and thus not cognizable in a judicial complaint. 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 very different allegation that the judge failed to recuse for illicit reasons—*i.e.*, not that the judge erred in recusing, but that the judge knew he should recuse but deliberately failed to do so for illicit purposes—is not merits related.” *Id.* The complainant does not allege any reason, much less an illicit one.

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: November 10, 2015