

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-
*90129/130/131
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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 and magistrate judges who presided over the dismissal of several of his underlying civil actions. The complainant alleges that all three subject judges were biased against him, as evidenced by their adverse rulings in the underlying cases, and that they therefore should have recused themselves from the underlying proceedings.

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.

This complaint is subject to dismissal as directly related to the merits of the named judges’ decisions in complainant’s 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. The Judicial Council is not a court and has no jurisdiction to review any rulings by a judge, or to grant the relief that may be requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). The subject judges’ failure to recuse does not change this calculus: a mere allegation that a judge should have recused him- or herself, as opposed to an allegation that the judge deliberately failed to recuse for an 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. Here, complainant does not allege any illicit circumstances that motivated the subject judges' failure to recuse. Similarly, casting his challenges to the subject judges' rulings in the underlying cases as allegations of bias does not change the fact that the complainant is simply challenging the merits of those rulings.

Accordingly, 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: August 17, 2016