

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90071
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judge, who presided over a criminal case wherein the complainant was found incompetent to stand trial, committed misconduct by denying the complainant’s motion for recusal.

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.

A simple allegation that a judge should have recused is merits related and thus not cognizable in a judicial misconduct 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: it 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.

Accordingly, it is **ORDERED** that the complaint 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: March 14, 2017