

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

In re:
Complaint of Judicial Misconduct

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*No. 06-19-90025
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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 subject judge presided over a civil suit brought by the complainant, which was settled by the parties. The complainant now argues that the subject judge committed misconduct and violated several canons of the Code of Conduct by not sua sponte recusing herself from the proceedings below. He alleges that recusal was required based on a friendship between the defendants’ attorney and the subject judge’s sister and points to the subject judge’s overruling of the magistrate judge’s recommendation that a TRO be granted as evidence of the subject judge’s bias.

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: the complaint is therefore subject to dismissal as directly related to the merits 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. And the complainant’s challenge to the subject judge’s order overturning the magistrate judge’s recommendation is likewise an attempt to challenge a merits ruling, albeit clothed in the language of bias, and is likewise due to be dismissed under Rule 11(c)(1)(B).

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: January 16, 2020