

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-20-90003/4
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]**, (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The subject judges are the district judge to whom two employment discrimination actions filed by the complainant were assigned, and the magistrate judge to whom those cases were referred. Both of those actions were voluntarily dismissed by the complainant. The complainant’s core allegation is that she did not consent to proceed before a magistrate judge, but the subject magistrate judge ignored her and “denied all her motions falsely.” Complainant also alleges that the subject judges and the Department of Justice (“DOJ”) “attempt[ed] by scheme and devise to orchestrate a claim of perceived disability”; that the subject judges engaged in ex parte communication with opposing parties; and gave special treatment to the defendants below.

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.

As a preliminary matter, it should be noted that the subject district judge, although actively serving when the complaint was filed, has since deceased. The complaint against that judge will therefore be dismissed pursuant to Rule 11(a)(3) & (e)

of the Rules for Judicial-Conduct and Judicial-Disability Proceedings because his passing has removed him from the ambit of the judicial-complaint process.

That part of the complaint that charges the subject magistrate judge with proceeding despite the complainant's lack of consent to proceed before a magistrate judge is subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. See *also* 28 U.S.C. § 352(b)(1)(A)(iii). A review of the record shows that the underlying cases were referred to the subject magistrate judge to preside over pre-trial proceedings pursuant to Federal Rule of Civil Procedure 16, which does not require the consent of the parties under 28 U.S.C. § 636(b)(1)(C), and that the judge did not exceed the scope of that referral.

The complainant's allegation that the subject judges and the DOJ "attempt[ed] by scheme and devise to orchestrate a claim of perceived disability" is difficult to decipher. The employment discrimination claims she attempted to raise in the underlying actions involved her own claim of a perceived disability, and she seemingly would have benefitted from such a scheme. At face value, this part of the complaint is also subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. To the extent she is alleging a conspiracy to somehow damage her case, her allegations are completely devoid of evidentiary or record support and are due to be dismissed under Rule 11(c)(1)(D). Similarly, her bald allegations of ex parte contact between subject judges and defendants below are wholly unsupported and are thus also dismissed pursuant to Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The only evidence supporting complainant's allegation that the subject magistrate judge afforded special treatment to the defendants in the underlying cases are the subject judge's adverse rulings. It is apparent that the complainant is attempting to put the cart before the horse, using his unsupported allegations of special treatment to bootstrap his challenges to those adverse rulings. This he may not do—challenges to the merits of a judge's rulings in underlying proceedings, including rulings of motions to recuse, are outside the scope of judicial-misconduct proceedings. See *id.*, Rule 3(h)(3)(A), Rule 11(c)(1)(B). A complainant may not avoid dismissal by simply alleging an improper motive without any supporting evidence. His complaint thus also fails under 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) & (iii) and Rule 11(a)(3), (e), (c)(1)(A), (B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: November 13, 2020