

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-20-90009/10
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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 complaint alleges that the subject judges, who presided over and ultimately dismissed complainant’s underlying employment discrimination case, “tainted th[at] case due to fraud, violation of due process, impropriety, bias, unethical practices, judicial bullying, history of corruption, and impropriety.” Her specific allegations are that she never received a copy of the clerk-signed summonses for all defendants; that the U.S. Marshal intentionally falsified documents and committed fraud when he “altered Plaintiff’s completed portion of the ‘Process Receipt and Return form USM-285’”; that her case was referred to the subject magistrate judge without her consent; and that the magistrate judge issued a Report and Recommendation before the complainant received proper notice of service on all defendants.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct 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”; (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; see 28 U.S.C. § 352(a), (b).

As a preliminary matter, neither complainant’s allegation that she did not receive copies of clerk-signed summons for all defendants nor that the U.S. Marshall falsified documents are cognizable in judicial complaint proceedings, as conduct by judicial employees other than judges is not reachable by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 4. The provision of copies to litigants is a

ministerial function of the clerk's office, and the complainant has not argued that the clerk's office's alleged failures to provide her copies was somehow attributable to either subject judge. Similarly, she has alleged no involvement by the subject judges in the Marshal's alleged falsification of documents.

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. Her charge that the subject magistrate judge issued a Report and Recommendation before the complainant received notice of service on all defendants likewise does not allege conduct that is prejudicial to the effective and expeditious administration of the business of the courts, and thus also fails under Rule 11(c)(1)(A).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: November 13, 2020