

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-13-
*90003/04/05
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M E M O R A N D U M

This complaint was filed with the Judicial Council of the Sixth Circuit pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, as amended by the Judicial Improvements Act of 2002, Pub. L. No. 107-203, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Rules Governing Complaints of Judicial Misconduct adopted by the Judicial Council of the Sixth Circuit.

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes:

- (1) that the claimed conduct, even if the claim is true, is not “conduct 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 office;
- (2) that the complaint is directly related to the merits of a decision or procedural ruling;
- (3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported.

Rule 4(c), Rules Governing Complaints of Judicial Misconduct or Disability.

This complaint was filed by a pro se litigant who, by petition for a writ of mandamus, challenged a district court’s judgment that dismissed his civil complaint and rulings that denied his post-judgment motions for relief from that judgment and for recusal. Complainant names the three federal circuit judges who comprised a panel of the United States Court of Appeals for the Sixth Circuit that construed his petition for mandamus relief as a notice of appeal in the underlying civil action, and directed the clerk to transmit the petition to the district court with directions that it be filed as a notice of appeal in that case. The panel subsequently denied complainant’s petition for a rehearing of its order. Complainant’s appeal in the underlying civil action was dismissed for want of prosecution after complainant failed to pay the appellate filing fee as directed. Thereafter, the appellate

court's en banc coordinator returned unfiled a subsequent petition for a rehearing en banc to complainant.

In his complaint of judicial misconduct, complainant objects to the panel's ruling regarding his mandamus petition, and contends that the panel was biased against him. Complainant also objects to rulings in his resulting appeal, and notes that the appeal was dismissed shortly after an earlier complaint of judicial misconduct he filed against the district judge in his civil action was dismissed. Complainant has also filed a motion for a change of venue, for summary judgment, or for Judicial Conference review.

This complaint is subject to dismissal in part as directly related to the merits of the named judges' ruling in complainant's mandamus case 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 rulings 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 ruling, or to grant any relief requested in the underlying mandamus petition or appeal. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Insofar as complainant alleges that the named judges were biased or otherwise engaged in misconduct to retaliate against complainant for filing a complaint against a district judge, the allegations are unsupported by credible facts that might warrant further investigation pursuant to 28 U.S.C. § 353. A review of the appellate court records reveals that, pursuant to court procedures, an individual circuit judge reviewed complainant's motion for leave to proceed in forma pauperis in his appeal. As is typical with the court's single-judge rulings, the individual ruling judge was not identified in the order, but the Judge was not a member of the earlier panel at issue in this complaint. Nothing of record even remotely suggests that misconduct occurred in this case. Under these circumstances, this complaint will be dismissed in remaining part as unsupported by any credible facts that warrant further proceedings pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant's motion for a change of venue, for summary judgment, or for Judicial Conference review is denied as meritless.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14