

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90030
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M E M O R A N D U M

This unverified 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. Because the complaint is not verified, it has been referred to the Chief Judge for consideration under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 5(b), 6(d), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 an attorney and university professor concerning a lawsuit involving the university. Complainant names the district judge who presided over the lawsuit. Although complainant was not involved in the litigation, complainant contends that the named judge should have recused because of substantial ties the judge and his wife have with the university. The named judge has responded to the complaint and asserts that while his and his wife’s ties to the university were substantial, they largely ended years ago. The judge notes that for a number of years thereafter, he took steps to

avoid any appearance of impropriety in cases involving the university. The judge also notes that complainant many years ago filed a verified complaint of judicial misconduct against him. This complaint, as noted, is not verified and therefore will be considered by the Chief Judge under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Upon consideration, this complaint is subject to dismissal directly related to the merits of the judge's rulings 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, specifically including any allegedly improper failure to recuse. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, the named judge had no "active interest in the outcome of the litigation." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 857 (1988) (affirming that appropriate remedy was to vacate a judgment where university had a pecuniary interest and the judge was a member of the university's board). Further, an acquaintance or even friendship with a defendant does not itself mandate recusal. See *Parrish v. Bd. of Comm'rs of Ala. State Bar*, 524 F.2d 98, 102 (5th Cir. 1975) (en banc). Under these circumstances, no probable cause exists to believe that misconduct occurred. See Rule 5(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rules 5(a) & 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14