

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

In re:
Complaints of Judicial Misconduct

*
*
*Nos. 06-12-90129/130
*& 06-13-90048/49/50/51
*
*
*

M E M O R A N D U M

These consolidated complaints were 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.

These related complaints were filed by a bankruptcy petitioner and his ex-wife, who was a creditor in the bankruptcy proceedings. First, the complainant bankruptcy petitioner and the complainant bankruptcy creditor each filed contemporaneous similar complaints of judicial misconduct against the bankruptcy judge who presided over the bankruptcy at issue. In their complaints of judicial misconduct, complainants asserted that the named bankruptcy judge was either biased or had “the propensity towards being biased” against them as evidenced by various rulings he made in the case. Thereafter, the complainant creditor filed her second complaint of judicial misconduct naming three federal judges who comprised an appellate panel of the Sixth Circuit that affirmed a district court’s order, which in turn affirmed the bankruptcy judge’s imposition of sanctions against both of the

complainants herein. Finally, the complainant creditor filed a third complaint of judicial misconduct against a federal magistrate judge who she also contends was biased.

The first four of these complaints of judicial misconduct are subject to dismissal as directly related to the merits of the named judges' decisions in the underlying bankruptcy and subsequent appeal 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 decisions, including any allegedly improper failure to recuse, 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 the named judges' rulings or to grant relief requested in the underlying proceedings. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). These complaints of judicial misconduct relate solely to the propriety of the named judges' decisions, constitute direct challenges to the merits of those decisions, and will be dismissed as such.

However, the complainant creditor's final complaint against the named magistrate judge is subject to dismissal as "lacking sufficient evidence to raise an inference that misconduct has occurred" 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 contentions that the named magistrate judge improperly upheld the named bankruptcy judge's decisions is belied by the court records. Review of the pertinent records reflects that, while the named magistrate judge's name appeared on district court docket sheets in several appeals involving the underlying bankruptcy, a district judge made all of the rulings in the appeals, including an order that denied as moot the bankruptcy petitioner's motion to recuse the named magistrate judge. The pertinent docket sheets reflect that the named magistrate judge in fact took no action whatsoever in the cases. Under these circumstances, the complainant creditor's complaint against the named magistrate judge will be dismissed as lacking any factual basis to suggest that misconduct occurred 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.

For these reasons, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(A) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 1-24-14