

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

In re:  
Complaint of Judicial Misconduct

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\*Nos. 06-13-90079/88  
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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 against two district judges. One of the subject district judges (the presiding judge) presided over and dismissed two separate civil actions brought by the complainant, and the other (the chief judge), acting in his capacity as chief judge of the district where those suits were brought, answered a letter that the complainant had sent him. The complaint and voluminous attachments are barely coherent, and present a bizarre narrative involving the National Basketball Association, a county in Michigan where, according to complainant, residents are having sex with their pets, and an FBI investigation of an alleged plot to assassinate a federal judge.

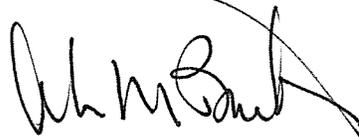
Applying the most liberal interpretation of the materials submitted by the complainant, he is alleging that the presiding judge was biased against him and should

have recused himself from either or both of the underlying civil actions. The bias stems from, according to the complainant, the judge's awareness that the FBI had investigated the complainant in connection with an alleged plot to kill a federal judge. Complainant was apparently not charged as a result of that investigation. Complainant moved to recuse the judge on these grounds in the most recent of the two underlying actions, but the judge denied the motion. The complainant also attempts to make an argument that the judge's prior employment as a county prosecutor should have disqualified him, but it is unclear why: Complaint tries to connect that prior employment to the county where residents are having sex with their pets, but names a different county as the judge's prior employer.

The allegations against the chief judge are based on that judge's answer to a letter sent to him by the complainant. In that letter, complainant expressed his dissatisfaction with the first judge's ruling in his underlying civil case, and the chief judge answered that he had no authority as chief judge to take action in a case assigned to another judge. Complainant now charges that the second district judge was "covering up" the transgressions of the first.

The gravamen of the complaint is the complainant's dissatisfaction with the presiding judge's rulings in his underlying cases, particularly the denial of the motion to recuse, and the chief judge's inability to change any of those rulings. The complaint is therefore subject to dismissal as directly related to the merits of the named judges' decisions in complainant's underlying cases 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. The presiding judge's refusal to recuse does not change this calculus: a mere allegation that a judge should have recused, as opposed to an allegation that a judge deliberately failed to recuse for illicit reason, is merits related and not cognizable in a complaint of judicial misconduct. See Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, Judicial Conduct and Disability Act Study Committee, Sept. 2006, p. 146. Here, complainant does not allege any illicit circumstances motivated the presiding judge's failure to recuse. Complainant's contention that the presiding judge should have recused is directly related to the merits of the judge's decision not to recuse, and is subject to dismissal 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.

Accordingly, this complaint will be dismissed 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.



Alice M. Batchelder  
Chief Judge

Date: 08-01-14