

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-13-
*90141/142/143
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M E M O R A N D U M

These 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 complaints were filed against a bankruptcy judge who has presided over a contentious bankruptcy adversary proceeding. Complainants are: (1) an attorney who, along with his wife, is a debtor in the underlying Chapter 7 bankruptcy; (2) counsel for the debtors; and (3) a former attorney who appeared in the case as an accountant. In their complaints of judicial misconduct, complainants contend that the named judge slandered and defamed the former attorney. In addition, the complainant debtor and counsel for the debtor also contend that other decisions and remarks made by the named judge exhibit bias.

The gravamen of these complaints of judicial misconduct is, at least to some extent, that the named judge made erroneous rulings in the underlying adversary proceeding.

Accordingly, these complaints are subject to dismissal in part as directly related to the merits of the named judge's rulings in the underlying 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 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 any rulings by a judge, or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Complainants' allegations in part directly challenge the merits of rulings made in the underlying adversary proceeding and will be dismissed as not a proper subject of a complaint of judicial misconduct.

Otherwise, complainants' contentions that the named judge's rulings and remarks were discourteous and exhibit bias are subject to dismissal as lacking sufficient evidence 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. Review of the pertinent court records reveals nothing that transcended the normal rough-and-tumble of litigation and entered into the sphere of misconduct cognizable in the judicial complaint process. See *Implementation of the Judicial Conduct and Disability Act of 1980*, 239 F.R.D. 116, 241 (2006). The complaints therefore will be dismissed in remaining part 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.

Accordingly, 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: 08-01-14