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

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In re:	*
Complaint of Judicial Misconduct	*No. 06-14-90004
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MEMORANDUM

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 brought by the unsuccessful plaintiff in a civil action removed from state court and ultimately resolved against the complainant by the subject judge's issuance of an order granting summary judgment for the defendants below. The complainant devotes a good deal of his argument to alleged transgressions by the attorney who represented him below, the attorneys who represented the defendant, and various witnesses who provided affidavits in support of the defendant's motion for summary judgment. Specific allegations against the subject judge are all related to that judge's rulings in the case below. For example, the complainant contends that by granting summary judgment, the subject judge refused "to allow [him] to appear in open court on the record and present evidence and give testimony" and rescinded his right to a jury trial.

The complainant also contends that the subject judge "refus[ed] to acknowledge plain error" when the judge denied his request for relief from judgment.

Complainant also argues that the subject judge, his attorney, and/or the defendant's attorneys should have informed him of a settlement in another case that was similar to but filed after his. He learned of this settlement, he states, from a conversation between the subject judge and the attorneys during a pretrial conference.

The bulk of the complainant's allegations are subject to dismissal as directly related to the merits of the named judge's decisions in complainant's underlying proceedings 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 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 judge's rulings or to grant relief requested in the underlying case. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Complainant's allegation that the subject judge did not inform him of the settlement of another case, even if true, does not allege conduct prejudicial to the effective and expeditious administration of justice nor state a claim of disability. That allegation is therefore appropriately dismissed pursuant to 28 U.S.C. § 352(a) & (b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's allegations of misconduct on the part of his attorney and the attorneys for the defendant are not cognizable in judicial complaint proceedings, *see* Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings, and need not be addressed herein.

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

Alice M. Batchelder
Chief Judge

Date: 08-01-14