

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90001
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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 the plaintiff-relator in a *qui tam* action in which he alleged that his employer, a federal contractor, made fraudulent claims for payment from the federal government and retaliated against him after he refused to cooperate with the misconduct. In his complaint of judicial misconduct, complainant names the federal district judge who presided over his *qui tam* action. After the federal government declined to intervene in the *qui tam* action, the named district judge granted the defendant employer’s motion for summary judgment. Complainant did not appeal.

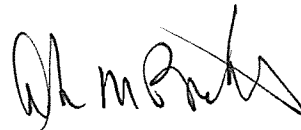
In this complaint, complainant asserts that the named judge “entered into a de facto conspiracy” and treated him in a “demonstrably egregious and hostile manner” when he ruled against the complainant. After a review of the pertinent court records as permitted

under Rule 11 (b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, this complaint will be dismissed.

First, the complaint is subject to dismissal in part as directly related to the merits of the district judge's ruling in the underlying action 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. 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 judge's ruling, or to grant the relief requested in the underlying case. Here, complainant's assertions at least implicitly challenge the merits of the named judge's evaluation of the evidence and ruling in the underlying case. Therefore, those assertions are subject to dismissal in part 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.

Complainant correctly notes that his unsupported assertions that the named judge conspired with an adverse party and that the judge treated him in an egregious or hostile manner are not subject to dismissal as strictly "merits-related." See Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings. However, these assertions 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 under the circumstances of this case. "To the extent [complainant's] usage of the phrase 'de facto conspiracy' reflects the total absence of allegations tending to show the existence of an *actual* agreement, it is apt." *Bel Canto Design, Ltd. v. MSS HiFi, Inc.*, No. 11 Civ. 6353 CM, 2012 WL 2376466, at *6 (S.D.N.Y. June 20, 2012). Complainant's conspiracy assertion is devoid of factual support in the record. Similarly, no evidence of record supports complainant's assertion that the named judge treated him in a hostile or egregious manner. See *In re Doe*, 640 F.3d 861, 863 (8th Cir. Jud. Council 2011). On the contrary, review of the record reflects that the named judge accorded complainant and counsel the appropriate respect throughout the proceedings. Accordingly, this complaint will be dismissed in part as unsupported by sufficient evidence to conclude 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, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14