

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

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OFFICE OF THE  
CIRCUIT EXECUTIVE

In re:  
Complaint of Judicial Misconduct

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\*  
\*Nos. 06-15-  
\*90065/66/67  
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge 1”), the Honorable [REDACTED] [REDACTED] (“subject judge 2”), and the Honorable [REDACTED] (“subject judge 3”), pursuant to 28 U.S.C. § 351.

Subject judge 2 presided over two civil cases brought by complainant in the district court. Subject judge 3 was the magistrate judge assigned to one of those cases. Subject judge 1 ruled on a previous judicial complaint brought by the complainant against subject judge 2 and another judge who has not been named in the instant complaint. The complainant alleges that all three subject judges refused to make or delayed rulings in the proceedings with which they were connected: subject judge 1 in the judicial complaint process and subject judges 2 and 3 in the underlying civil cases.

Because this circuit’s Chief Judge was named in this complaint, the matter was referred to the undersigned pursuant to 28 U.S.C. § 351(c), which provides that a judicial complaint against a chief judge be transmitted “to that circuit judge in regular active service next senior in date of commission.” Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that, where a chief judge is disqualified, his or her duties “must be assigned to the most-senior active circuit judge not disqualified.”

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, “is not 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 judicial office”; (B) that the complaint “is directly related to the merits of a decision or procedural ruling”; (C) that the complaint is “frivolous,” a term that applies to charges that are wholly unsupported; or (D) that the complaint “lack[s] sufficient evidence to raise an inference that

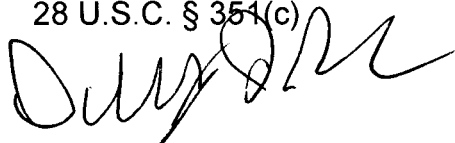
misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process pursuant to Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not shown and cannot show unreasonable or persistent delays, nor has he alleged an improper motive. In any event, the docket sheets in those underlying cases show constant activity, including repetitive responses, replies, and motions for extension of time and reconsideration of judicial orders and judgments. The previous judicial complaint was dismissed prior to the filing of the current complaint. The record thus belies any allegations of delay, unreasonable or otherwise. Therefore, the complaint is subject to dismissal as unsupported by sufficient evidence pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Subject judge 3, though actively serving when the complaint was filed, has since retired. The complaint against this judge will therefore be dismissed pursuant to Rule 11(a)(3) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings because his retirement has removed him from the ambit of the judicial complaint process. Even were the subject judge still active and thus within reach of the complaint process, the complaint against this judge would be subject to dismissal as unsupported by sufficient evidence.

For these reasons, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) and 11(a)(3), (c)(1)(D), & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Entered as Chief Judge Pursuant to  
28 U.S.C. § 351(c)



Danny J. Boggs

Date: \_\_\_\_\_

12/16/16