

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. 06-15-90071/72
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge 1”), and the Honorable [REDACTED] [REDACTED] (“subject judge 2”).

The complaint charges that subject judge 2, who presided over an underlying civil case brought by the complainant in the district court, “is constantly doing misconduct and judicial disability [in that] case.” Specifically, the complainant alleges that subject judge 2 wrongly insisted that complainant had not stated a claim, committed perjury by insisting that the defendants had not violated the constitution, and hindered his case by “holding [his] paper work for months before sending it to [him].” The complainant alleges that he wrote a letter to subject judge 1 about the conduct of subject judge 2, but that the former refused to answer.

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

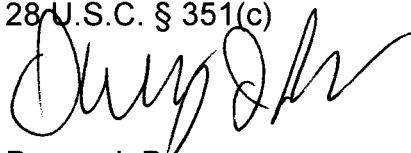
misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The complainant’s allegations against subject judge 2 all concern rulings made in the proceedings below. The complaint against subject judge 2 is therefore subject to dismissal as directly related to the merits of the named judge’s decisions in complainant’s underlying civil 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. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent the complaint alleges delay, it 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. 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.

The complainant’s allegation against subject judge 1 does not state a cognizable claim of misconduct or disability under the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Even assuming the truth of complainant’s allegations that he mailed a letter to subject judge 1 (there is no record of such a letter and the complainant did not attach a copy to his complaint), subject judge 2 had no involvement in the case, and no jurisdiction to act absent an invocation of the judicial complaint process. The complaint against subject judge 1 is thus dismissed pursuant to Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(B) and 11(c)(1)(A), (B) & (D) 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: 12/16/10