

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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*No. 06-16-90024
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **REDACTED** (“complainant”) against the Honorable **REDACTED** United States Magistrate Judge for the Western District of Michigan (“subject judge”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judge violated the law by rejecting the complainant’s pleading titled “Bill of Information Submitted to: Grand Jury.” In subsequent correspondence, the complainant challenges the authority of this circuit’s chief judge, suggesting that he is using an alias and questioning the legitimacy of his appointment.

Because this circuit’s chief judge is named in this matter, it is 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.” Because, however, the supplemental materials that implicate the chief judge are not verified, that part of the complaint will be considered under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 5(b), 6(d), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

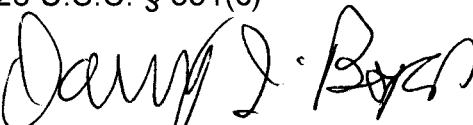
After conducting an initial review, the chief judge may dismiss a misconduct complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, “is not prejudicial to the effective and expeditious administration of the business of the courts”; (B) that the complaint “is directly related 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; see 28 U.S.C. § 352(a), (b).

An initial review of the record reveals that the subject judge entered an order rejecting the complainant's "Bill of Information" on the ground that a criminal complaint can be initiated only by the United States Attorney's Office. The gravamen of this complaint is the complainant's dissatisfaction with that order. Because the judicial complaint process may not be used to challenge a ruling in an underlying proceeding, see 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings, the complaint against the subject judge is properly dismissed under 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.

The complainant's allegations that the Chief Judge is using an alias and may not be serving under a valid appointment are fantastical and entirely unsupported by any evidence, and would be subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Because the supplemental materials raising allegations against the chief judge were not verified, however, they must be considered under Rule 5 of those rules. See Rules 6(d) & 5(b). Under Rule 5, the chief judge (or his substitute under Rule 25(f)) may decline to identify a complaint if he or she has no probable cause to believe that misconduct has occurred or that a disability exists. See Rule 5. Finding no such probable cause, the undersigned declines to identify a complaint against the chief judge.

For these reasons, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rules 5 & 11(c)(1)(B) 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