

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-17-90108
*
*
*
*

MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judge made false statements that defamed his character and that the subject judge exhibited bias.

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 conducted a settlement conference in the complainant’s employment discrimination action. In addition to the subject judge, the conference was attended by the complainant, a representative of his employer, and the employer’s attorney. The complainant became upset while meeting ex parte with the subject judge during the conference. The subject judge reported to the Marshals Service that the complainant began to cry, then stood up, flailed his arms, crouched down, and stood up again and punched the air. The complainant then left the courthouse in what the subject judge described as “a very agitated state.” The subject judge stated that the complainant did not threaten her. A deputy marshal approached the complainant outside of the courthouse and determined that he had calmed down.

The complainant acknowledges that he wept while meeting with the subject judge, but he denies the other actions that the judge reported to the Marshals Service.

The complainant also alleges that the subject judge remarked to the attorney for his employer that one of the judge's interns had been hired by the attorney's firm.

The central allegation of this complaint is that the subject judge's report to the Marshals Service mischaracterized the complainant's actions during the ex parte conference. But even if that allegation is true—i.e., even if the complainant did not in fact flail his arms, crouch down, and stand up and punch the air—the judge's conduct was not prejudicial to the effective and expeditious administration of the business of the courts. It is undisputed that the complainant became visibly upset during the conference, and it is undisputed that the subject judge denied feeling threatened by the complainant's behavior. In this context, any inaccuracies in the judge's description of the complainant's specific movements and gestures were immaterial. The complaint is thus subject to dismissal under Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

The complaint also alleges bias, based on the subject judge's alleged remark that one of her interns had been hired by the complainant's employer's attorney's law firm. Assuming that the subject judge in fact made the alleged remark, it is insufficient to establish bias. And in any event, the subject judge recused herself from the proceeding after participating in the settlement conference that is the subject of this complaint. The complaint is thus subject to dismissal under Rule 11(c)(1)(A) & (e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. See *also* 28 U.S.C. § 352(b)(1)(A)(iii), (b)(2).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) & (b)(2) and Rule 11(c)(1)(A) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ R. Guy Cole, Jr.
Chief Judge

Date: March 29, 2018