

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90109
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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 subject judge presided over the trial on the complainant’s employment discrimination claim, in which the jury returned a verdict for the defendants. The complainant contends that the subject judge “conducted herself in an unprofessional manner” by 1) “having improper discussions with parties or counsel for one side”; 2) by “treating litigants, attorneys, or others in a demonstrably egregious and hostile manner”; and 3) “engaging in partisan political activity or making inappropriately partisan statements.”

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.

Complainant’s sole factual allegation in support of her first challenge is that “[p]rior to the appointment of counsel for the Plaintiff, the Defendants’ [sic] were communicating with the Judge and not always with the Plaintiff.” She does not specifically argue that the government lawyers who represented the agency defendant were communicating with the judge about her case; points to nothing in the record; nor offers no other support for this allegation. Nor does an independent review of the records, filings, and transcripts in her case support her allegations of improper conduct. This part of the complaint is thus dismissed under Rule 11(c)(1)(C) as entirely unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant's charge that the subject judge treated parties in a hostile and egregious manner focuses mainly on her allegation that the subject judge "made comments that indicated [complainant] was an egregious liar." She alleges that these comments were made throughout the trial but identifies only a single instance, when, during a proffer, outside the presence of the jury, a plaintiff's witness was asked to identify a document, and could not. A review of the trial transcript shows that the document was purported to be a witness list that the witness had prepared and attached to his own discrimination complaint, but the witness did not recognize the page he was handed and denied that he had prepared it. All of the parties were confused about the source of the document, including the complainant and her trial attorneys, and the subject judge noted that it looked like it was prepared by the complainant's typewriter. The complainant denied preparing it, and the discussion continued. The court ultimately accepted the document but sustained on relevancy grounds the defense's objection to the witness testifying about its contents.

The challenged comment cannot reasonably be taken as an accusation that the complainant was lying. All of the parties to the discussion were confused about the origination of the document, including defense counsel, and the defense had submitted numerous exhibits that were in fact prepared by the complainant. A review of the transcript clearly shows that the subject judge was simply, as was everyone else involved in the discussion, attempting to discern the provenance of the proffered document. And a review of the transcript reveals no other comments that could be, under any standard of interpretation, construed as accusations of lying. This part of the complaint is therefore also subject to dismissal under Rule 11(c)(1)(C) as entirely unsupported by the record. *See also* 28 U.S.C. § 352(b)(1)(A)(iii). To the extent the complainant is challenging the subject judge's exclusion of testimony, such challenge is dismissed as directly related to the merits of the named judge's decisions in the underlying proceedings, 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.

In support of her charge that the subject judge engaged in partisan political activity and or made inappropriately partisan statements, the complainant points out that the defendant below was the Secretary of Defense, who, like the subject judge, is appointed by the president. The complainant apparently attributes a number of the subject judge's decisions below, including decisions regarding the appointment of counsel, to this commonality. These arguments are clearly challenges to the merits of judicial decisions made in the underlying proceedings, 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. And the complainant may not avoid these strictures by couching her challenges to such rulings in the language of partisan activities. *See* 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.

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

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

Date: March 29, 2018