

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-18-90105/106/
*107/108
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judges failed to exercise administrative control over the complainant’s appeals, thereby allowing procedural manipulations that prevented adequate appellate review. This matter was referred to the undersigned pursuant to 28 U.S.C. § 351(c).

Since the filing of this complaint, Circuit Judge Damon J. Keith has died. As to Judge Keith, therefore, the complaint must be concluded under Rule 11(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The allegations against the other subject judges are discussed below.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct 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 complainant filed two appeals originating from the same district-court proceeding. The first was an interlocutory appeal from an order denying a motion to disqualify the district court judge. The court of appeals dismissed that appeal for lack of jurisdiction. The second appeal was from a post-judgment order denying the complainant’s renewed motion for recusal and motion for relief from the judgment. The court of appeals—a panel comprising three of the

subject judges—affirmed the district court’s order. The panel denied the complainant’s subsequent petition for rehearing en banc.

The gravamen of this complaint is that the subject judges, through inattention or negligence, allowed court of appeals staff to manipulate the appellate proceedings so as to protect the district court’s judgment from review. The complaint is subject to dismissal under Rule 11(c)(1)(C) and (D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). For one thing, the record does not reflect any manipulation or other impropriety in the docketing of the complainant’s appeals. Contrary to the complaint’s allegations, there were two distinct appeals, and neither of them was taken from the district court’s final judgment on the merits. The issues that the panel addressed in the second appeal were the only issues over which the court of appeals had jurisdiction in that appeal. For another thing, the record does not reflect that the subject judges had direct oversight of the docketing activities that the complainant disputes.

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

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

/s/ Karen Nelson Moore

Date: April 23, 2021