

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-19-90010  
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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 complaint alleges that the subject judge made “unprofessional comments” during a settlement conference, stating, for example, that the complainant is “nothing more than an inmate.” The complaint alleges further that the subject judge took the opposing parties’ side at the conference and, when the case did not settle, vindictively recommended dismissal of the complainant’s action.

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 complainant filed a civil action that was referred to the subject judge. On initial screening, the subject judge recommended that certain claims be dismissed and that others be permitted to proceed. The district court adopted that recommendation. At the complainant’s request, the subject judge then conducted a settlement conference by telephone. No transcript of the conference appears in the record. The case did not settle, and the subject judge thereafter recommended that the district court grant a motion to dismiss that was filed by the defendants. The district court adopted that recommendation and entered final judgment.

Treating a litigant “in a demonstrably egregious and hostile manner” constitutes cognizable judicial misconduct. Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. But the subject judge’s alleged comments here were

not “sufficiently rude, derogatory or intemperate” to meet that standard. *In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1098 (9th Cir. 2014). Taking the complaint’s allegations as true, it appears that the subject judge expressed a belief that a settlement would be appropriate and perhaps some frustration with the complainant’s decision not to settle. But the judge “did not use demeaning language or heap abuse on” the complainant. *Id.* at 1099. This complaint is thus subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. See also 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that it alleges that the subject judge vindictively recommended dismissal of the complainant’s action, the complaint is subject to dismissal under Rule 11(c)(1)(C) because the allegation is entirely unsupported by the record. See also 28 U.S.C. § 352(b)(1)(A)(iii).

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)(A) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: September 24, 2019