

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

In re:  
Complaint of Judicial Misconduct

\*  
\*  
\* No. 06-19-90045  
\*  
\*  
\*  
\*  
\*

**MEMORANDUM AND ORDER**

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. Complainant is a former employee of the court in which the subject judge presided. Complainant charges that the subject judge committed various acts of judicial misconduct, including engaging in bullying behavior towards complainant and other court employees; demonstrating a lack of judicial temperament in court; excessive absenteeism; failing to address administrative court duties; engaging in improper contract procurement; failing to participate in physical sighting inventory; improper use of court mail services; and sexual harassment of certain court employees. Moreover, complainant charges that the subject judge suffers from disability in the form of “substance abuse/impairment of mental faculties.”

After conducting an initial review, the chief judge must determine whether a complaint should be: (1) dismissed; (2) concluded on the ground that voluntary corrective action has been taken; (3) concluded because intervening events have made action on the complaint no longer necessary; or (4) referred to a special committee. Rule 11(a)(1)-(4), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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); see 28 U.S.C. § 352(a), (b).

In substantial part, the complaint is subject to dismissal under Rule 11(c)(1)(D) as the allegations lack sufficient evidence to raise an inference that misconduct occurred. A limited inquiry, conducted pursuant to Rule 11(b), demonstrated that most allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence. Specifically, complainant’s allegations that the subject judge lacked judicial

temperament in court; displayed excessive absenteeism; failed to address administrative court duties; engaged in improper contract procurement; failed to participate in physical sighting inventory; improperly used court mail services; sexually harassed certain court employees; and was disabled by “substance abuse/impairment of mental faculties” lack any reliable factual foundation and/or are conclusively refuted by objective evidence. As such, the complaint should be dismissed in part regarding these specific allegations. Rule 11(c)(a)(D); see 28 U.S.C. § 352(b)(1)(B).

Complainant’s allegation that the subject judge engaged in bullying behavior towards complainant during his time as an employee of the court is subject to dismissal pursuant to Rule 11(c)(1)(A) because the complaint alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges one or two isolated incidents of the subject judge being “extremely rude” or “cursing and yelling” at him sometime during 2014 or 2015. Even if complainant’s allegations were true, the nature of these isolated incidents would not rise to the level of cognizable conduct under Rule 4(a)(2) concerning abusive or harassing behavior. That Rule identifies cognizable conduct as: “treating litigants, attorneys, judicial employees or others in a demonstrably egregious and hostile manner; or creating a hostile work environment for judicial employees.” Rule 4(a)(2)(B)-(C). Here, there is no evidence that the subject judge treated complainant in a demonstrably egregious and hostile manner, or that the limited isolated incidents of alleged bullying behavior created a hostile work environment. While such alleged behavior might be a violation of the rules, it does not indicate a threat to the safety or security of any person, is not serious or egregious such that it threatens the integrity and proper functioning of the judiciary, and does not rise to the level of misconduct under the Act. See Commentary to Rule 4.

Complainant’s allegation that the subject judge engaged in bullying behavior towards other court employees is subject to conclusion pursuant to Rule 11(a)(2) and Rule 11(d)(2) because voluntary corrective action has been taken. The subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint. See 28 U.S.C. § 352(b)(2).

Accordingly, it is **ORDERED** that the complaint be dismissed in part pursuant to 28 U.S.C. § 352(b)(1)(B), Rule 11(c)(1)(D), and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. It is further **ORDERED** that the complaint be concluded in part pursuant to 28 U.S.C. § 352(b)(2) and Rule 11(a)(2) and Rule 11(d)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: April 12, 2021