

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

In re:
Complaint of Judicial Misconduct

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*No. 06-20-90021
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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 delayed rulings in a case in which the complainant is a party, engaged in improper ex parte communications, and made inappropriate partisan statements. These allegations relate to a hearing that the subject judge held on the complainant’s motion for reconsideration of orders that had denied him reopening of a long-closed proceeding.

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).

The record reveals that the complainant was a claimant in a proceeding that was assigned to the subject judge. The case was closed in 2010, but in 2016 the complainant filed a motion to reopen. The subject judge denied the motion. The complainant moved for reconsideration, and the judge denied that motion as well. The complainant again moved for reconsideration. In June 2017, the subject judge set a hearing on the motion for July 18, 2017. On July 5, the complainant filed an “Amended Reply to Order on Motion to Reconsider.” The complainant did not appear at the July 18 hearing, and the subject judge denied his motion for reconsideration. The judge also denied the complainant’s July 5 “Amended Reply.”

This misconduct complaint alleges that the July 5 “Amended Reply” included or constituted a request to continue the July 18 hearing, and that the subject judge

improperly failed to grant or deny the request prior to the hearing. But the record belies that allegation: the July 5 “Amended Reply” neither states nor arguably implies that the complainant was seeking a continuance of the hearing. The complaint further alleges that the hearing was improperly ex parte; but the complainant failed to appear at the hearing, through no fault of the subject judge. Finally, the complaint alleges that the subject judge committed misconduct by stating, in the order denying the motion for reconsideration, that opposing counsel’s appearance at the hearing was “opportune.” But this statement cannot reasonably be construed as expressing partiality. The context makes clear that the subject judge considered counsel’s appearance “opportune” because counsel was able to confirm facts establishing that the motion for reconsideration was moot. Because the allegations of the complaint are refuted or entirely unsupported by the record, it is subject to dismissal as frivolous under Rule 11(c)(1)(C). *See also* 28 U.S.C. § 352(b)(1)(A)(iii).

For these reasons, 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) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ Jeffrey S. Sutton
Chief Judge

Date: June 3, 2021