

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

In re:  
Complaint of Judicial Misconduct

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\* No. 06-22-90026  
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**MEMORANDUM AND ORDER**

This complaint of judicial misconduct was filed by [REDACTED] [REDACTED] [REDACTED] (“complainant”) against the Honorable [REDACTED] [REDACTED] (“subject judge”), pursuant to 28 U.S.C. § 351. Complainant is an attorney who practices in the court in which the subject judge presides. Complainant charges that the subject judge is impaired by a physical disability and committed judicial misconduct, interfering with the subject judge’s ability to discharge his duties as a federal judge in an impartial and effective matter. Specifically, complainant charges that the subject judge suffers from disability in the form of a vision impairment that impedes his ability to review and comprehend lengthy legal briefs in an expeditious manner. The complainant also alleges the subject judge engaged in improper *ex parte* communications of a substantive nature in a civil matter, which may have given opposing counsel a procedural, substantive, and tactical advantage in the case.

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).

Complainant’s allegation that the subject judge suffers from a disability, macular degeneration, that impedes his ability to comprehend legal filings is subject to dismissal under Rule 11(a)(1) and Rule 11(c)(1)(D). In particular, the allegation lacks sufficient evidence to raise an inference that a cognizable disability exists. Rule 4(c) defines “disability” as an impairment “rendering a judge unable to discharge the duties of the

particular judicial office.” While it is true that the subject judge admits a vision impairment, the evidence also shows that impairment is accommodated with assistive technology. No evidence supports complainant’s claim that the subject judge’s macular degeneration has any effect on his ability to comprehend legal filings, timely address issues before him, or otherwise discharge his judicial duties. The complaint is speculative and based on allegations lacking sufficient evidence to raise an inference that a disability exists and, as such, is subject to dismissal. Rule 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(B).

The complainant’s allegation that the subject judge engaged in *ex parte* communication is subject to conclusion under Rule 11(a)(2). A docket notice entered by the subject judge’s assistant directed complainant and opposing counsel “to file short, concise, and double-spaced *ex parte* statements via cm/ecf detailing discovery issue[s]” ahead of a status conference. The parties filed the statements as directed and the subject judge then presided over the status conference. On the one hand, this directive was published on the docket for all to see, *no party complained* either in writing or at the subsequent conference, and nothing in the conference transcript indicates that the subject judge was aware that the statements had been filed using a restricted setting. On the other hand, the docket shows that the parties’ statements, at least one of which was substantive in nature, were indeed filed *ex parte*. The matter has been brought to the attention of the subject judge and voluntary corrective action has been taken 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) and Rule 11(a)(1) and Rule 11(c)(1)(D) 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/ Jeffrey S. Sutton*  
Chief Judge

Date: November 3, 2022