JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:	*	
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Complaint of Judicial Misconduct	*	06-25-90018
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [redacted] ("complainant") against [redacted] ("subject judge"), under 28 U.S.C. § 351. The complainant challenges the subject judge's rulings in an underlying case and claims that the subject judge falsely accused him of making threats towards the judge.

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; (D) that the complaint "lack[s] sufficient evidence to raise an inference that misconduct has occurred"; or (E) that the complaint "is based on allegations that are incapable of being established through investigation." Rules 11(c)(1)(A)–(E), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Judicial-Conduct Rules"); *see* 28 U.S.C. § 352(a), (b).

The subject judge presided over a lawsuit the complainant filed in 1997. In late 1998, the subject judge granted summary judgment to the defendant and dismissed the case. No appeal followed and the proceedings have been concluded since that time.

This misconduct complaint appears to allege that the subject judge made a false accusation against the complainant over 26 years ago. During the complainant's lawsuit, the subject judge set the case for a telephone status conference. The complainant claims that, on the day of the status conference, the subject judge called the complainant to notify him that he had granted the defendant's motion for summary judgment. During this call, the complainant reports that he argued with the subject judge about the merits of the motion and hung up on him.

The complainant alleges that the subject judge then falsely reported to the United States Marshals Service that the complainant had threatened the subject judge. As a result, a deputy marshal visited the complainant's personal residence. The complainant says he was not home during this visit, but that a friend who was at his home told him about it. The complainant alleges that he then notified the local police. He also called "the head marshal," who told him that the subject judge had said that the complainant had threatened him on the phone. After the phone call with the marshal, the complainant says, "it was over."

This complaint warrants dismissal. Although a misconduct complaint may be filed at any time, *see* 28 U.S.C. § 358(c), "if the passage of time has made an accurate and fair investigation of a complaint impracticable, the complaint must be dismissed under Rule 11(c)(1)(E)," Judicial-Conduct Rule 9. That is particularly true when "the passage of time [is] accompanied by an unreasonable delay in filing a misconduct action." *In re Complaint of Judicial Misconduct*, 591 F.3d 638, 644 (U.S. Jud. Conf. Oct. 26, 2009) (concluding that seven-year delay in filing misconduct complaint caused prejudice to a full and fair investigation).

The delay here is unreasonable. The complainant files this misconduct complaint over 26 years after the alleged events in question. He offers no explanation why he could not have filed "soon after [the subject judge] allegedly engaged in the actions at issue." *See id.* at 643 (quotation omitted). Nor is there "any indication that any information in the complaint was not available to [him] at the time of the alleged events" in 1998. *See id.* (quotation omitted).

The effect of the 26-year delay is compounded by the complainant's failure to support his claims with sufficient evidence. He identifies one witness by name (his friend) but provides no means for contacting this person. He offers no specific information about his contacts with the marshals and the local police, making corroboration of those conversations impossible. An "accurate and fair investigation" of this phone call after well over two decades is simply not practicable. *See* Judicial-Conduct Rule 9.

The lack of evidence, coupled with the significant passage of time, requires that this complaint be dismissed as incapable of being established through investigation. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rules 9 and 11(c)(1)(E).

To the extent that the complaint challenges the subject judge's decisions in the underlying case, it is also dismissed as merits-related. The judicial-complaint process may not be used to challenge the merits of judicial decisions made in underlying proceedings; such decisions are not the proper subject of a complaint of judicial misconduct. *See* Judicial-Conduct Rule 4(b)(1). The Judicial Council is not a court and has no jurisdiction to review the subject judge's rulings or to grant relief in the underlying cases initiated by the complainant. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). The complaint is therefore also subject to dismissal as directly related to the merits of the subject judge's decisions. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

Accordingly, it is **ORDERED** that the complaint be dismissed under 28 U.S.C. § 352(b)(1)(A)(ii)–(iii) and Rules 11(c)(1)(B) and (E) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ Jeffrey S. Sutton
Chief Judge

Date: May 5, 2025