JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:	*	
	*	
Complaints of Judicial Misconduct	*	06-25-90027
	*	06-25-90028
	*	
	*	
	*	

MEMORANDUM AND ORDER

These complaints of judicial misconduct were filed under 28 U.S.C. § 351 by [redacted] ("complainant") against [redacted] ("subject judge 1"), [redacted] ("subject judge 2"), [redacted]. The complaints allege that subject judge 2 engaged in improper ex parte communications and that subject judge 1 knew of this misconduct yet failed to report it.

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." Rules 11(c)(1)(A)–(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Judicial-Conduct Rules"); *see* 28 U.S.C. § 352(a), (b).

The complainant is a pro se litigant. Subject judge 2 presided over the complainant's underlying civil suit on referral from subject judge 1.

Early in those proceedings, the complainant moved for a default judgment. When responding to the motion, the opposing counsel noted that "Defendant's counsel was not made aware of [the underlying complaint] until the Court notified counsel of same . . . ." Subject judge 2 recommended denying the complainant's motion. The complainant objected to the recommendation, noting that subject judge 2 had not addressed his "concern . . . about [the] claim that the court contacted [opposing counsel] ex parte." Subject judge 1 overruled the complainant's objections and adopted subject judge 2's recommendation without resolving the ex parte allegations.

These misconduct complaints primarily allege that subject judge 2 engaged in ex parte communications when he notified the opposing party of the existence of the complainant's lawsuit. They then allege that subject judge 1 knew of the misconduct and failed to take appropriate action. As explained below, the complaints warrant dismissal.

Ex Parte Communication by Subject Judge 2. "Cognizable misconduct includes . . . engaging in improper ex parte communications with parties or counsel for one side in a case." Judicial-Conduct Rule 4(a)(1)(C).

The allegation that subject judge 2 violated this rule warrants dismissal. Although the complaints point to opposing counsel's statement that "the Court" notified her of the underlying lawsuit, this evidence is insufficient to suggest that *subject judge 2* engaged in misconduct. The term "the Court" does not refer to a specific judge. Rather, this could refer to staff in the clerk's office, email notifications generated by the electronic filing system, or other possibilities. *Cf. In re Charge of Judicial Misconduct*, Nos. 10-10-90035 through 10-10-90037 (10th Cir. C.J. Nov. 16, 2010) (a statement that a matter "had come to the Court's attention" did not give rise to a reasonable inference that the judge had improper communications with one party to a case). The allegation that subject judge 2 either "initiated on his own" or "instructed" a court employee "to contact" the defendant is purely speculative.

Subject Judge 1's Failure to Report Misconduct. A judge commits misconduct by "failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability." Judicial-Conduct Rule 4(a)(6).

The allegation that subject judge 1 committed misconduct by failing to report subject judge 2's purported misconduct must also be dismissed. As explained above, the complaints have not presented sufficient evidence to suggest that subject judge 2 engaged in impermissible ex parte communication. It follows that they also have not established that subject judge 1 betrayed any reporting obligation.

Other Allegations. To the extent the complaints challenge the subject judges' decisions after the complainant alerted them to the purported ex parte communications, they also must be dismissed. 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 judges' rulings or to grant relief requested in the underlying case. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). To the extent the complaints challenge the merits of the subject judges' decisions, they are subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

One of the complaints also alleges that subject judge 2 instructed the defendant on how to thwart service of process, promised favorable rulings to the defendant, obstructed discovery, and denied the complainant sufficient time to review deposition

transcripts. These allegations all rest on the complainant's belief that subject judge 2 engaged in improper ex parte communications. They thus meet the same fate. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

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

/s/ Jeffrey S. Sutton
Chief Judge

Date: May 30, 2025