JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:	*	
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Complaint of Judicial Misconduct	*	06-25-90111
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [redacted] [redacted] ("complainant") against [redacted] ("subject judge"), under 28 U.S.C. § 351.

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).

I.

The subject judge presided over the complainant's underlying civil case. The complainant, an attorney, brought claims against her former employer and his associates based on her termination of employment. After motion practice in which the defendants obtained dismissal or summary judgment of most of the claims, the case proceeded to a jury trial on three remaining claims against the former employer.

The subject judge then presided over a multi-day trial during which the complainant represented herself pro se. The jury found in favor of the complainant on one claim and found in favor of the former employer on the other two. The jury awarded back pay and compensatory and punitive damages.

Following the verdict, the former employer moved for judgment as a matter of law and also moved to stay execution of the judgment and any post-judgment discovery.

Roughly 11 months later, the subject judge granted the stay pending a ruling on the other motion. A few weeks after that, the subject judge gave the former employer partial relief, reducing the back-pay award and nixing the punitive damages.

Both parties appealed. The Sixth Circuit affirmed the district court's judgment across the board.

This misconduct complaint asserts that the complainant has received "extensive retaliation . . . as a result of [her] jury verdict." It alleges that the subject judge is a participant in this campaign at the behest of his "political friend(s) / associate(s) of a common fraternal organization." Compl. 1. The subject judge's conduct, it contends, "show[s] a clear picture of prejudice and deliberate manipulation in favor of [the former employer]." Compl. 1, 5.

In support, the complaint points to the subject judge's "unusual conduct in [her] case and his refusal to properly protect the verdict during the appeal." Compl. 2. It focuses on rulings and decisions he made. They include dismissal of claims against a defendant, allowing the complainant's attorney to withdraw one week before trial, using the former employer's title during the trial, merging claims to reduce potential damages, excluding the complainant's evidence and expert testimony, and reducing the damages award. Compl. 3. The complaint also alleges that the subject judge's delay in ruling on post-judgment motions and his handling of the bill of costs and appeal bond prejudiced the complainant's ability to execute on the judgment. Compl. 4–5.

The complaint also points to the subject judge's demeanor during the proceedings. During the trial, the complaint alleges, the subject judge "rolled his eyes" and "sighed loudly." Compl. 3. And when the complainant called the subject judge's chambers to ask a question, she says the subject judge "got on the phone and yelled at [her] that [she] would have to 'figure it out.'" Compl. 4.

Finally, the complaint focuses on the subject judge's shared "connections" with a defendant, including their "similar careers as prosecutors, a common membership in the fraternal organization" (which she repeatedly references but does not identify), and a "history of [the defendant's] cases being 'randomly' assigned to [the subject judge]." Compl. 2.

II.

This complaint boils down to an allegation that the subject judge abused his office to retaliate against the complainant and favor his friends. Taken alone or together, the claims are either insufficient or not cognizable. I will therefore dismiss this complaint.

The Judicial Conduct and Disability Act excludes complaints that are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii). Such decisions are not the proper subject of a misconduct complaint. *See* Judicial Conduct Rule 4(b)(1). The Judicial Council is not a court and has no jurisdiction to review a subject

judge's rulings or to grant relief requested in underlying cases. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Although the judicial-complaint process may not be used to challenge the merits of a judge's ruling, an allegation that a decision is "the result of an improper motive" can constitute cognizable misconduct. *See* Judicial-Conduct Rule 4(b)(1). Alleging that a judge ruled against a complainant based on personal prejudice does not go to the merits. "Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive." *See* Commentary to Judicial-Conduct Rule 4(b)(1).

An allegation that a judge's decisions were based on an improper motive "must be supported by sufficient evidence to raise an inference that misconduct occurred and cannot be based on mere speculation." *In the Matter of a Judicial Complaint*, No. 04-20-90004, at *3 (4th Cir. C.J. Sept. 28, 2020). A chief judge may dismiss an allegation of improper motive if the "allegation is wholly conclusory and is unsupported by anything in the record" apart from the unfavorable decision or action itself. *In re Charge of Judicial Misconduct*, No. 08-9011, at *6 (2d Cir. C.J. June 26, 2008). If a complainant alleges that a subject judge's failure to follow the law in a particular case amounted to misconduct, she "must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law." *In re Judicial Conduct & Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

Measured against this standard, this complaint must be dismissed. The complaint's evidence—unfavorable judicial rulings, delay in issuing those rulings, the subject judge's demeanor, and a connection with the complainant's adversaries through an unnamed "common fraternal organization"—is insufficient to suggest that the subject judge ruled with an improper motive.

Begin with the rulings in the underlying case. The complainant takes aim at the judge's rulings before, during, and after the trial. These rulings are not, by themselves, a basis for a cognizable claim in this proceeding. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 4(b)(1). And the complainant has not demonstrated "clear and convincing evidence" that the rulings amounted to "arbitrary and intentional departure from prevailing law." *In re Judicial Conduct & Disability*, 517 F.3d at 562. She points to her appellate briefs as "illustration" of "instances where [the subject judge] subtly manipulated the case." Compl. 3. That is a difficult sell when the judgment in that case was affirmed in full. *See In re Judicial Misconduct*, 631 F.3d 961, 962 (9th Cir. C.J. Jan. 14, 2011) (concluding that, "in order to avoid the merits-related bar, a complainant must at a minimum allege that the rulings in question have been reversed on appeal").

Next up is the allegation that the subject judge used his office to obtain special treatment for associates of an unidentified "common fraternal organization." The connections cited by the complaint—common career paths, membership in this "organization"—are both tenuous and generic. They are not sufficient to suggest that the subject judge ruled against the complainant for impermissible reasons.

The allegations about the subject judge's demeanor are also insufficient to suggest improper motive. The complaint notes that the subject judge "rolled his eyes, sighed loudly," and repeatedly ruled against the complainant at trial. Compl. 3. Judicial remarks that are "critical or disapproving of" a party "ordinarily do not support a bias . . . challenge" in the absence of evidence that would establish a "high degree of favoritism or antagonism" that would "make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Similarly, "[j]udicial rulings alone almost never constitute a valid basis" for showing bias. *See id.*

No stronger is the contention that the subject judge "yelled" at the complainant on the phone and told her to "figure it out" in an "irritated manner." Compl. 4. Set aside the complaint's pure speculation about the reason for this irritation. *See id.* Even if it is true, "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometime display" do not establish "bias or partiality." *Liteky*, 510 U.S. at 555–56.

Finally, consider the alleged delays. A claim of delay is cognizable in judicial misconduct proceedings only if accompanied by an allegation that a particular decision was deliberately delayed with an improper motive, or that the subject judge has habitually delayed decisions in a significant number of unrelated cases. *See* Judicial-Conduct Rule 4(b)(2). Conversely, a complaint of delay in a single case may be said to challenge the correctness of the subject judge's official action and is therefore merits-related. *See* Commentary to Judicial-Conduct Rule 4.

Delay does not move the needle. The complaint alleges that the subject judge deliberately delayed addressing post-judgment motions to prejudice the complainant. *See* Compl. 4. It is true that some of those rulings were delayed. But the discussion above establishes that the allegations of improper motive are speculative, rooted in disagreement with the merits, or based on inadequate evidence. That leaves "only the delay itself to support the charge of improper motive," which is insufficient. *In re Charge of Judicial Misconduct*, No. 08-9011, at *6.

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: November 21, 2025