# JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

**MICHIGAN-OHIO-KENTUCKY-TENNESSEE**

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| In re: | * | |
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| Complaint of Judicial Misconduct | * | 06-25-90132 |
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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.

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 initiated a lawsuit pro se. The subject judge dismissed that lawsuit with prejudice for failure to prosecute due to the complainant's refusal to pay the filing fees. Her dismissal order also concluded that the complaint must be dismissed under the three-strikes rule in the Prison Litigation Reform Act of 1995.

This misconduct complaint challenges the subject judge's application of the three-strikes rule and her decision to dismiss the case with prejudice. It also alleges that she improperly characterized the complainant's litigation history as "frivolous," causing "substantial and continuing reputational harm."

This complaint warrants dismissal. The allegations about the three-strikes rule and the dismissal with prejudice challenge the merits of the subject judge's decisions in the underlying case. 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 requested in the underlying case. *See In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). These allegations are therefore dismissed as merits-related. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B).

The allegation that the subject judge improperly characterized the complainant's litigation history as "frivolous" must also be dismissed. The judge's order contained a factual statement that the complainant "has had at least five other in forma pauperis complaints dismissed as frivolous, as malicious, or for not stating a claim." This language is "relevant to the case" and thus "presumptively merits-related . . . absent evidence apart from the ruling itself suggesting an improper motive." *See* Commentary to Judicial-Conduct Rule 4. As the complainant has presented no evidence of improper motive, this allegation is dismissed. *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) and Judicial-Conduct Rule 11(c)(1)(B).

*/s/ Jeffrey S. Sutton*
Chief Judge

Date: April 7, 2027