

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

In re:
Complaint of Judicial Misconduct

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* No. 06-24-90110
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by Van R. Irion ("complainant") against the Honorable Travis R. McDonough, Chief United States District Judge for the Eastern District of Tennessee ("subject judge"), under 28 U.S.C. § 351.

The complainant is an attorney who has practiced before the subject judge. The complainant alleges that the subject judge manipulated the assignment of cases within his district and that he has altered court records. He also challenges the subject judge's actions in disciplinary proceedings the subject judge initiated against the complainant.

After reviewing this complaint, I undertook a "limited inquiry" of the allegations. See Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Judicial-Conduct Rules"). As part of this inquiry, I may speak with people "who may have knowledge of the matter," and "obtain and review" "relevant documents." *Id.* The subject judge provided a written response to the complaint and also answered my follow-up questions. His responses includes information compiled by his court's information-technology and clerk's office staff.

A chief judge may dismiss a complaint as "lacking sufficient evidence to raise an inference that misconduct has occurred" or "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii)–(iii); see also Judicial-Conduct Rules 11(c)(1)(B), (D). Although "the chief judge must not determine any reasonably disputed issue," Judicial-Conduct Rule 11(b), he may dismiss a complaint when a limited inquiry shows that the allegations "lack any reliable factual foundation, or that they are conclusively refuted by objective evidence." See Commentary to Judicial-Conduct Rule 11.

I will review each claim in turn.

A. Random Assignment of Cases

The complainant alleges that the subject judge interfered with the random assignment of cases in his district. Compl. 1. He specifically challenges the assignment of three cases he filed on behalf of a client in 2023. For the following reasons, the evidence does not raise an inference that misconduct has occurred.

Factual Findings. In 2020, the complainant represented an individual who filed suit against a city and its officials. The subject judge and a magistrate judge were assigned to preside over the complaint. In 2023, the complainant filed an additional case involving some of the same parties. This case also went to the subject judge and the same magistrate judge. (All mentions of "the magistrate judge" in this order refer to the same person. That magistrate judge is not a subject of this misconduct complaint.)

Subject to various exceptions, the district's clerk's office assigns new cases to judges and magistrate judges at random and preserves a record of those assignments. The subject judge's response to this complaint includes information from the district's case-assignment records. Those records, which are automatically generated, show that the subject judge and the magistrate judge both drew the 2020 case and the first 2023 case through random assignment.

Within a few months of filing the first 2023 case, the complainant moved to amend that complaint to incorporate allegations about new incidents. The magistrate judge denied this motion. Unable to amend the first 2023 complaint, the complainant filed two new lawsuits on behalf of his client.

One of the district's exceptions to random assignment provides for the transfer of certain related civil cases. Under the court's rules, if the clerk thinks that a new case may be related to an older case, the clerk may refer the new case to the magistrate judge assigned to the older case. The magistrate judge is then tasked with deciding whether the two cases are related. If the magistrate judge considers the cases related, she may direct the clerk to assign the case to the district judge and magistrate judge who handled the earlier case.

Following the procedures outlined in this local rule, clerk's office staff referred the second and third 2023 complaints to the magistrate judge for a "related case determination." The magistrate judge concluded that the new 2023 complaints should be assigned to the subject judge and herself "for purposes of judicial efficiency." The complainant objected, and the subject judge overruled the objection.

Analysis. The complaint alleges that the "the Court has violated Federal law and fundamental due process by assigning [the subject judge and the magistrate judge] non-randomly" in the first two cases. Compl. 2. It also challenges the actions that resulted in the third and fourth complaints going to the same judicial pairing. Compl. 3. These allegations warrant dismissal.

As an initial matter, the complaint refers repeatedly to “the Court,” conflating the actions of court staff, the magistrate judge, and the subject judge. It does not actually allege, let alone establish, that the subject judge controlled every aspect of the case-assignment process in all four cases.

Even if each allegation could be attributed to the subject judge, the evidence does not support a finding that he interfered with the district’s case-assignment procedures. The district’s records show that the 2020 case and the first 2023 case went to the subject judge through random assignment. As for the two later 2023 cases, the dockets show that clerk’s office staff referred those cases to the magistrate judge in accordance with the district’s local rules. The magistrate judge explained her decision in an order placed on the public docket. The evidence does not reveal any misconduct in the assignment of these cases.

The complainant’s contrary arguments do not alter this conclusion. He first claims that the assignment of the first 2023 case to the same subject judge and magistrate judge as the 2020 case has a statistical likelihood of “significantly less than 1%.” Compl. 2. He does not show his math. The actual chance of drawing this pairing at any given time—roughly 8%—was hardly “so extraordinary as to raise any inference that the established random plan was not followed.” See *In re Complaint of Judicial Misconduct*, No. 08-6-351-14 (6th Cir. C.J. Feb. 12, 2009) (dismissing claim that cases had been inappropriately assigned).

His theory about the later 2023 complaints also fails to show misconduct. See Compl. 3–4. In his view, “the Clerk had no reason to forward the case[s] to [the magistrate judge] for a related-case determination.” Compl. 3. But even if the clerk’s office staff erred in thinking these complaints may have been related to the first 2023 case, their mistakes are not attributable to the subject judge. See *In re Complaint of Judicial Misconduct*, No. 05-6-351-65 (6th Cir. C.J. Apr. 24, 2006). The clerk’s office’s purported errors are therefore not the proper subject of a judicial misconduct complaint. See 28 U.S.C. § 351(a) (authorizing complaints against “a judge”).

Moreover, disagreement with the magistrate judge’s related-case determination is a dead-end road. See Compl. 4. For one thing, the magistrate judge—not the subject judge—made the call. Even if one considers the subject judge’s later overruling of the ensuing objection, we cannot evaluate its merits here. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling.” Judicial-Conduct Rule 4(b)(1). (That being said, on direct appeal the Sixth Circuit concluded that the related-case determination “was entirely reasonable.”)

Finally, the complainant is mistaken in his belief that the court’s electronic filing system reveals a nefarious scheme. He notes that the initial documents filed in the second and third 2023 cases are stamped with the subject judge’s and magistrate judge’s initials. He filed these documents *before* the related-case determination. This, in his mind, reveals one of two things: either the assignment was pre-determined, or the district was “illegally

changing Court records days and weeks after the documents were filed." Compl. 4. Neither theory is true.

The complainant misunderstands how the electronic filing system works. Attorneys and court staff will be familiar with the blue text stamped on each page of each document filed in any federal court's docket. In district courts, the text will include the case number, the assigned judges' initials, the document number, the date filed, internal page numbers, and "PageID" numbers that link all filings in the case. The system generates these headers each time a user opens a document and, critically, updates certain parts of the headers throughout the life of a case. For example, if the case is reassigned at any point, the filing system will update the new judge's name on the header on every document in the case—even documents filed before the reassignment. It is entirely expected, then, that documents filed prior to the magistrate judge's related-case determination would today show the subject judge's initials. Their presence is not evidence of misconduct.

Accordingly, I will dismiss the allegation that the subject judge interfered with the random assignment of cases because I find no evidence to raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

B. Retaliation and Alteration of Court Records

The complaint also accuses the subject judge of retaliating against the complainant. Compl. 5–7. It alleges instances of "intentional and illegal alteration of the Court record" in separate disciplinary proceedings initiated by the subject judge. Compl. 5. And it adds that "the Court is currently blocking [the complainant's] access to certain documents in order to cover up the changes they have made to Court records." Compl. 6. These allegations also warrant dismissal.

Factual Findings. On August 8, 2024, the subject judge issued a show-cause order against the complainant in a separate, sealed proceeding. A review of the electronic filing records and records of communications between the subject judge and his staff show how this document was generated.

On the morning of August 8, 2024, the Court's administrative lawyer entered the show-cause order. When confirming that the document was successfully uploaded, the administrative lawyer noticed that the case number on the order was incorrect. She quickly replaced the first show-cause order with a second document containing the correct case number. When the subject judge viewed the document a few hours later, he observed that the replaced document contained metadata visible to those with access to the docket. The subject judge alerted a different staff member, who scrubbed the metadata from the document and again replaced the show-cause order with a metadata-free copy. The docket shows that the original document was replaced on August 8. Because the document was twice replaced, the operative show-cause order begins at PageID#9, and not PageID#1.

That same day, the clerk's office sent the complainant the show-cause order at his office address by certified mail. The court used mail service because the order was an initiating document. The tracking information shows that the U.S. Postal Service was in possession of the mailing by 10:13 PM on August 8 and delivered it on August 13. Because the return receipt had a blank signature card, the clerk's office sent another copy of the order to the complainant's office and home addresses. The complainant contends that he did not receive service of the order until August 15.

On August 9, the complainant petitioned for rehearing en banc before the Sixth Circuit in an appeal from one of his 2023 cases. In his petition, the complainant accused the subject judge of "abus[ing] his authority by forcing assignment of particular cases to himself, without legitimate grounds." The Sixth Circuit later denied the petition.

Over a month later, on September 23, the complainant submitted his response to the show-cause order. He contends that his response, which is filed under seal and thus not available for review, "exposes numerous unethical actions taken by" the subject judge. Compl. 7.

The following day, September 24, the Sixth Circuit issued its mandate in the appeal from one of the 2023 cases. Later that day, the subject judge granted long-pending motions for attorney's fees against the complainant's client in that case and one of the other 2023 cases.

Roughly a week later, the complainant attempted to download copies of the initiating complaints in the later 2023 cases. In both cases, he received a message that the document could not be shown because "it has already been shown once." Compl. 6. A different firm was able to download the documents at the complainant's request. The complainant believes that "the Court is currently blocking [his] access to certain documents in order to cover up the changes that they have been making to Court records." Compl. 6.

Analysis. The complaint alleges that the subject judge retaliated against the complainant by initiating disciplinary proceedings, granting attorney's fees in his underlying cases, and blocking his access to the docket. Compl. 5–7. These allegations cannot survive the Rule 11 inquiry, for they have no basis in fact.

Start with the disciplinary proceedings. The complainant is simply wrong to suggest that the subject judge initiated these proceedings only after he complained about the subject judge's conduct in his en banc petition with the Sixth Circuit. All the available evidence shows just the opposite: that the court docketed the show-cause order on August 8, a day before the complainant filed the petition. Indeed, U.S. Postal Service records show that the clerk's office sent the complainant the show-cause order by certified mail on August 8. The complainant's contrary theory—that the subject judge issued the show-cause order after reading his August 9 petition "and then had the date of entry changed to cover up his retaliation," Compl. 7—is contradicted by objective evidence. See Commentary to Judicial-Conduct Rule 11.

The claim that the subject judge blocked the complainant's access to the docket is not backed up by evidence. The error message he cites in his complaint is one familiar to attorneys who use the electronic filing system: that the document could not be shown because "it has already been shown once." Compl. 6. Those designated to receive email notifications of docket filings get one free look at a document; after that, they must pay to download it. That the complainant encountered an error message does not raise an inference of misconduct on the part of the subject judge.

Now consider the subject judge's decision to grant attorney's fees in two of the complainant's cases on September 24. In the complainant's view, these rulings were prompted by his September 23 response to the show-cause order, in which he alleged "numerous unethical actions taken by" the subject judge. Compl. 7. As an initial matter, it seems improbable that the relevant orders, twenty-three pages in total, were crafted within a day. And it seems quite probable that the subject judge was waiting for the Sixth Circuit's mandate before ruling on the fees motions. In any case, "[t]he law is clear that temporal proximity, standing alone, is insufficient to establish a causal connection for a retaliation claim." *Kuhn v. Washtenaw County*, 709 F.3d 612, 628 (6th Cir. 2013) (quotation omitted). The complainant's speculation of such causation "lack[s] any reliable factual foundation" and thus warrants dismissal. See *Commentary to Judicial-Conduct Rule 11*.

As for the allegations that the subject judge altered court records, these too cannot survive the Rule 11 inquiry. Most of the complainant's concerns on this score are addressed above. At base, he focuses on the mechanics of the filing system, not the subject judge. Such complaints about the court's operations, untethered from the subject judge's conduct, are simply not the proper subject of a judicial-misconduct complaint. See *In re Complaint*, No. 05-6-351-65. These allegations fall outside the scope of the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(i).

The complainant's one claim specific to the subject judge—that he improperly replaced a document on the docket of the disciplinary proceeding—similarly fails. As an initial matter, this too is not cognizable in a misconduct proceeding because it challenges the subject judge's procedural decisions as to docket management. See *Judicial-Conduct Rule 4(b)(1)*. Even if such decisions could be the basis for misconduct, the decision to remove the document's metadata (while adding a docket notation that the document had been replaced) does not constitute misconduct. As the subject judge notes in his response, this alteration to the document's metadata had no effect on the paper copy that the court mailed to the complainant. This allegation thus warrants dismissal as attacking the merits of the subject judge's decisions and lacking sufficient evidence to raise an inference that misconduct has occurred. See 28 U.S.C. § 352(b)(1)(A)(ii)–(iii); *Judicial-Conduct Rules 11(c)(1)(B), (D)*.

C. Failure to Recuse

Finally, the complainant alleges that the subject judge should recuse from the pending disciplinary action. Compl. 6. The subject judge initiated those proceedings and,

in the complainant's view, "is the accuser, a fact witness, and an expert witness, yet he is also acting as presiding judge." Compl. 6. This, too, warrants dismissal.

The disciplinary proceedings are under seal. The complaint broadly notes only that they involve three alleged "different instances of 'fraud on the court.'" Compl. 5. It does not provide any more detail, and the subject judge's written response has respected the confidentiality of the proceedings.

Nevertheless, the contention that the subject judge should recuse from the disciplinary proceeding is subject to dismissal. The judicial-complaint process may not be used to challenge the merits of judicial decisions made in underlying proceedings, "including a failure to recuse." See Judicial-Conduct Rule 4(b)(1). This portion of the complaint is therefore 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)(i)–(iii) and Rules 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ Jeffrey S. Sutton
Chief Judge

Date: February 20, 2025