

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS FOR THE NINTH CIRCUIT

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November 16, 2017

James D. Benish
9069 Lake Road
Otisville, MI 48463

Re: Complaint of Judicial Misconduct No. 17-90074

Dear Mr. Benish:

Chief Judge Thomas has issued an order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 42 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 352(c); Judicial-Conduct Rule 18(b).

Very truly yours,



Elizabeth A. Smith

EAS/tc

FILED

NOV 16 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 17-90074

ORDER

THOMAS, Chief Judge:

Complainant alleges that a district judge failed to properly supervise personnel in the office of the clerk of court, whom complainant claims mishandled his citizen's affidavit and submissions that complainant expected would require the court to convene a grand jury. Upon limited inquiry, court staff advised that complainant was informed that the documents were forwarded to the United States Attorney's Office, but that the court could not direct what matters that office would investigate. Staff further explained to complainant that the court had the authority to summon a grand jury, but only after the government decided to pursue the matter. Complainant has provided no evidence that the clerk's office mishandled his documents, nor that the district judge improperly supervised court staff. This charge is therefore dismissed for failure to allege "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant further alleges that the judge violated the separation of powers doctrine because a member of the clerk of court's staff was simultaneously employed by the United States' Attorney's Office (USAO). Complainant supports this charge by stating that the court employee was listed as a point of contact for the USAO in a phone directory. A limited inquiry reveals that the staff member was previously employed at the USAO, left after the directory was published, and then became employed by the court. These allegations are dismissed as unfounded. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant's allegations against court staff are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

DISMISSED.