

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

October 19, 2023

Chief Judge Diane S. Sykes

No. 07-23-90034

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant, a defendant in state-court litigation for partition of property, removed the case to federal district court. The district judge promptly reviewed the removal sua sponte and remanded the case to state court for lack of subject-matter jurisdiction. The complainant has filed a misconduct complaint accusing the judge of having ex parte communications with the plaintiffs' attorney. To support this allegation, he attached an email he received from plaintiffs' counsel advising him that a scheduled hearing in the state litigation remained on the state court's calendar. The complainant thinks the timing of these events is suspicious: the district judge signed the remand order on a Thursday, the plaintiffs' attorney sent him the reminder email the next day (Friday), and the judge's remand order was docketed the following Monday. From this sequence, the complainant speculates that the judge must have given the plaintiffs' attorney ex parte advance notice of the remand order.

A misconduct complaint must be supported by sufficient facts to raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii). Speculation is insufficient, and this complaint is supported by nothing more than speculation. The reminder email from the plaintiffs' attorney is not evidence of any ex parte communication by the district judge, nor does it suggest that the attorney had improper advance notice of the judge's remand order. On its face, it shows only that the attorney had checked with the state-court clerk and confirmed that the scheduled hearing date remained on the court's calendar.

Accordingly, the complaint is dismissed pursuant to § 352(b)(1)(A)(iii). The complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rule 18(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. *Id.* § 352(c); see RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 11(g)(3). A

petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit not later than 42 days of the date of this order.