

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90031
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M E M O R A N D U M

This complaint was filed with the Judicial Council of the Sixth Circuit pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, as amended by the Judicial Improvements Act of 2002, Pub. L. No. 107-203, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Rules Governing Complaints of Judicial Misconduct adopted by the Judicial Council of the Sixth Circuit.

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes:

- (1) that the claimed conduct, even if the claim is true, is not “conduct prejudicial to the effective and expeditious administration of the business of the courts” and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;
- (2) that the complaint is directly related to the merits of a decision or procedural ruling;
- (3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported.

Rule 4(c), Rules Governing Complaints of Judicial Misconduct or Disability.

This complaint was filed by a pro se prisoner against the district judge who presided over his underlying civil action. The complainant insists that his complaint “is not a charge of judicial misconduct based upon the way [the subject judge] decided Complainant’s case(s), nor is it directly based on [the judge’s] ruling in relation to the merits of Complainant’s case.” Rather, the complainant asserts, his “complaint is brought forward to shed light on the manifest prejudice and unfairness of [the judge’s] conduct in relation to the ‘administration of the business of the courts.’” The complainant devotes the bulk of his complaint, however, to rearguing the merits of the underlying civil suit and challenging the subject judge’s rulings in relations thereto. That part of the complaint is appropriately dismissed as directly related to the merits of the named judge’s decisions in complainant’s underlying civil action pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the

Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such decisions are not the proper subject of a complaint of judicial misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council is not a court and has no jurisdiction to review the named judge's rulings or to grant relief requested in the underlying civil case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

The complainant also contends that the subject judge and his divisional colleagues are notoriously biased against prisoners, and offers to prove his assertion with an affidavit from another inmate at his facility. The complainant does not, however, identify any action on part of the subject judge that was motivated by this alleged bias, and he did not at any point during the proceedings below move the subject judge to recuse himself. Complainant's conclusory contentions that the subject judge is biased against prisoners are insufficiently supported by credible facts to warrant an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. "An allegation may be dismissed as 'inherently incredible' even if it is not literally impossible for the allegation to be true. An allegation is inherently incredible if no reasonable person would believe that the allegation, either on its face or in light of other available evidence, could be true." Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice, Judicial Conduct and Disability Act Study Committee, Sept. 2006, p. 148. Review of the available court records reveals that complainant's allegations are devoid of factual support and are inherently incredible. The complaint therefore will be dismissed in remaining part pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14