

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-13-90036
*
*
*
*

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 conditionally granted his petition for a writ of habeas corpus in 2005. In 2012, complainant filed a motion to clarify the judge’s 2005 opinion and order, and in his complaint of judicial misconduct, complainant objects to the named judge’s conditional grant of habeas corpus relief and to the judge’s delay in ruling on his motion to clarify.

This complaint is subject to dismissal in part as directly related to the merits of the district judge’s judgment in complainant’s underlying habeas corpus proceeding 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 proceeding. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Otherwise, this complaint is subject to dismissal as "lacking sufficient evidence to raise an inference that misconduct has occurred" 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. First, Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings specifically provides that a delay in making a ruling or decision, without more, does not constitute misconduct cognizable in the judicial complaint process. Review of the available court records reveals there was no inordinate delay in adjudicating complainant's motion to clarify. Rather, the court record reflects that the named judge ordered the state to respond to the motion, which complainant filed over seven years after entry of the judgment in his case. After complainant submitted a reply, the named judge ruled on the motion approximately four months later.

Further, any intimation that the named judge otherwise acted inappropriately is entirely unsupported by credible facts that might warrant an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. The available court record is devoid of any suggestion of any impropriety. 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 Rules 3(h)(3)(A) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14