

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-13-90045/104
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M E M O R A N D U M

These consolidated complaints were 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.

These complaints were filed by a pro se prisoner against the magistrate judge and district judge who presided over complainant’s habeas corpus action. In his first complaint of judicial misconduct, complainant objected that, although the case had been pending well over two years, the named magistrate judge had not submitted a report and recommendation in the case. Complainant also alleged that the magistrate judge engaged in improper ex parte communications with law enforcement personnel. After the named district judge adopted the magistrate judge’s recommendation that complainant’s habeas corpus petition be denied, complainant filed a similar complaint of judicial misconduct against the district judge.

These complaints are 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 case. Notably, the record reflects that the named magistrate judge issued a report and recommendation in complainant’s case two days before complainant dated this complaint of judicial misconduct. Moreover, the district court docket reflects that complainant had submitted four supplements to his habeas corpus petition within two months of the magistrate judge’s report and recommendation. The district court promptly ruled on complainant’s objections to the magistrate judge’s report and recommendation. Under these circumstances, complainant cannot show that the named judges unduly delayed issuing a ruling in his case.

Further, complainant’s conclusory allegations that the named judges engaged in improper ex parte communications are unsupported by credible facts that might 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. A fair reading of these complaints, in conjunction with a review of the available court record, reveals that complainant’s allegations are devoid of factual support and are inherently incredible. The complaints therefore will be dismissed 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, these consolidated complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) & 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14