

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

In re:
Complaint of Judicial Misconduct

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* Nos. 06-13-90059/60
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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, 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 Tennessee prisoner against the district judge (since retired) and magistrate judge who were assigned to two civil cases brought by the complainant, both of which were summarily denied. The complainant is apparently arguing that both judges deliberately delayed ruling in both cases, and he attributes the delay to the judges’ desire to give “special treatment to relatives along with personal favors.”

In reviewing a complaint under 28 U.S.C. § 352(a), the Chief Judge may conduct a limited inquiry for the purpose of determining uncontested facts, and may review relevant documents from the district court record. An examination of the district court docket sheet in both of complainant’s underlying civil actions shows that both were dismissed within three months of filing.

With respect to the former district judge, the complaint will be dismissed pursuant to Rule 11(a)(3) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings because the district judge has retired, making the judicial complaint process nugatory. In

any event, as discussed below, the complainant alleged no conduct by the judge that would be cognizable under Rule 3(h) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings or 28 U.S.C. § 351(a), and the complaint would therefore have been subject to dismissal under Rule 11(c)(1)(G) and 28 U.S.C. § 352(b)(1)(A)(i) in any event.

Allegations of delay in rendering a decision are not cognizable in the judicial complaint process unless the complaint alleges that a delay in ruling on a specific matter was deliberate and the result of an improper motive, or alleges habitual delay in a significant number of unrelated cases. Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, given the temporal proximity of the judges' dispositive rulings to the initiation of both actions, there is simply no delay shown. Under such circumstances, complainant's allegations of an improper motive need not be addressed. Moreover, even had the alleged habitual pattern of delay occurred on the part of the subject judges, he could not show that such a pattern affected his cases. The complaint is therefore appropriately dismissed 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.

To the extent complainant's allegation of motive for the purported delay – i.e., the subject judges' desire to give "special treatment to relatives along with personal favors" – can be interpreted as an allegation that the subject judges "may have" used their offices to obtain special treatment for friends or relatives, in violation of Rule 3(h)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, that allegation can also be summarily dismissed as "lacking sufficient evidence" pursuant 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. Any allegations that the subject judges' actions in the underlying actions were intended to benefit their friends or relations, or that their friends or relations could have somehow been benefitted by the dismissal of those actions, 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. The complainant offers nothing in support of the allegation.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) and 11(a)(3), (c)(1)(D) & (e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 08-01-14