

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90061
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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 Michigan prisoner against the district judge who is currently presiding over his underlying civil action. He argues that the subject judge has purposefully delayed the underlying proceedings, and that the subject judge used his office to obtain special treatment for his relatives.

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 shows that complainant initiated the underlying action in the district court in August of 2011 with a 111 page complaint naming at least 80 defendants and supported by more than 700 pages of exhibits. At the time this complaint was filed, the action had been pending 21 months. During that time, the complainant filed numerous documents, including a 120 page amended complaint and an interlocutory appeal, and the district court dismissed several of his claims and at least 19 defendants.

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. The complainant alleges that the motive for the delay is that “the Subject Judge doesn’t want to deal with the massive paper load of the numerous Defendants and the complaint with supporting evidence.” Given the prolixity of the complainant’s pleadings and the numerosity of the defendants, it cannot be said that there has been any deliberate delay in the underlying proceedings. Under such circumstances, complainant’s allegations of an improper motive need not be addressed. Moreover, the complainant has not alleged that the complained of delay was part of a habitual pattern of delay on the part of the subject judge, and the limited inquiry undertaken pursuant to 28 U.S.C. § 352(a) reveals no such pattern. That part of the complaint that alleges improper delay will therefore be dismissed under Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant’s allegations that the subject judge “may have” used his office 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, are based on unconfirmed information from another inmate that the subject judge had relatives working at the prison where the underlying civil action arose. The complainant does not name those relatives, does not contend that any of them were defendants in the underlying lawsuit, and does not allege how they might have been benefitted. Under these circumstances, the remainder of the complaint may be 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. Complainant’s conclusory allegations that the subject judge had relatives working at the prison, much less that he used his office to benefit such relatives, 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 more in support of the allegation than hearsay from a fellow inmate, and the available case records reveal no factual support for complainant’s suspicion that the subject judge “may have” used his office to benefit those alleged relatives. 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 as lacking sufficient evidence to infer that misconduct occurred 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.

A handwritten signature in black ink, appearing to read "Alice M. Batchelder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alice M. Batchelder
Chief Judge

Date: 08-01-14