

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

In re:  
Complaint of Judicial Misconduct

\*  
\*  
\*Nos. 06-13-  
\*90063/64/65/66  
\*  
\*  
\*

**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 against the district judge who denied the complainant’s petition for a writ of habeas corpus, filed under 28 U.S.C. § 2241, and the panel of circuit judges who affirmed that judgment. The complainant challenges the judges’ rulings in the underlying action and appeal, contending that the district judge “made the false claim” that the complainant did not show that 28 U.S.C. § 2255 was inadequate to challenge his convictions, and the circuit judges “backed” the district judge and “illegally dismissed the appeal.” He also contends that all of the subject judges “illegally conspired against [him] by illegally denying every motion for appointment of counsel [he] filed,” and that they “illegally communicated with each other ex parte.”

That part of the complaint that challenges the subject judges' rulings in the underlying proceedings is appropriately dismissed as directly related to the merits of those rulings. Such rulings 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 any rulings by a judge, or to grant the relief that may be requested in the underlying actions. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Those parts of the complaint that relate to the merits of the subject judges' rulings in the underlying proceedings are thus appropriately dismissed 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.

Complainant's generic allegations of a conspiracy and ex parte communications between the subject judges may be dismissed without further inquiry. "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. Complainant's bald assertion is inherently incredible. The remainder of the complaint will be dismissed as insufficiently supported by credible facts to warrant either a limited inquiry as authorized by 28 U.S.C. § 352(b) or an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. 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: 08-01-14