

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90073
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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, 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 prisoner against a magistrate judge who was assigned to the complainant’s multiple civil actions. The complainant alleges that the subject judge “has a ‘major’ mental disability which adversely affect [sic] his ability to discharge all the duties of his office.” Complainant asserts that the subject judge “exhibits the signs and symptoms of Alzheimers disease,” as evidenced by the orders he issued in complainant’s underlying cases, which orders, according to the complainant, “pertain[ed] to another case in his docket that ha[d] absolutely nothing to do with my case.” Complainant also asserts, as evidence of disability, the subject judge’s inability to remember the rules of civil procedure, citing as an example the subject judge’s denial of a motion for discovery, and the fact that the judge “has an attorney assisting him with recalling motions on his docket.”

Complaint notes that he moved the court to disqualify the judge on several occasions, but was unsuccessful.

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 and attached documents in both of complainant's underlying civil actions does not show the entry of any orders that were not related to the complainant's cases, or that did not directly and cogently address the motions to which they were directed. Nor do the records show that any orders or related docket entries were corrected, withdrawn, or substituted. Moreover, the docket sheet reveals no attempts by complainant to "advise" the subject judge of his confusion. The specific order that the complainant pointed to as evidencing the subject judge's "confusion" was a legally correct application of Federal Rule of Civil Procedure 26 to the facts of complainant's case. Although the complainant did move in the district court for the disqualification of the subject judge, his motion was based on allegations of bias and impartiality, which allegations the complainant supported by reference to the subject judge's adverse rulings. Complainant's allegation that the subject judge is assisted by an attorney "with recalling motions on his docket" is no doubt true, as all federal judges are entitled to and avail themselves of the assistance of law clerks.

The complaint is thus subject to dismissal 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. "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 allegations of bias, even read indulgently in light of the evidence available in the pertinent court records, are devoid of any factual support and are inherently incredible. The fact that the challenged rulings were all adverse to the complainant is not sufficient to support his charges of bias. Therefore, this complaint 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, the complaint 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.



Alice M. Batchelder
Chief Judge

Date: 08-01-14