

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90087
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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 pro se prisoner against a district judge who dismissed complainant's prisoner civil rights action without prejudice. Complainant contends that the named district judge erroneously concluded that complainant had not complied with a prior order to complete and return service of process packets for the defendants named in his civil rights complaint, and that the district judge had not ruled on a motion to alter or amend the judgment in which complainant explained the erroneous dismissal. A review of the pertinent court records reveals that, after complainant filed this complaint of judicial misconduct, the named district judge promptly granted complainant's motion to alter or amend the judgment and restored the case to the court's active docket.

Upon consideration, this complaint of judicial misconduct will be dismissed in part as directly related to the merits of the named district judge's initial decision to dismiss complainant's civil rights action 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. Such decisions, even erroneous decisions, are not the proper subject of a complaint of judicial misconduct. 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 relief in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). In any event, complainant has been granted the relief he requested in his motion to alter or amend the judgment at issue.

Insofar as the complaint of judicial misconduct alleges an inordinate delay in ruling on the motion to alter or amend the judgment, the complaint will 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. 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 no excessive or inappropriate delay. The delay at issue does not, as complainant suggests, reflect bias. The complaint therefore will also be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) and 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed in part as directly related to the merits of the decisions of the named district judge pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rules 3(h)(3)(A) & 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and 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.



Alice M. Batchelder
Chief Judge

Date: 08-01-14