

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

In re:
Complaints of Judicial Misconduct

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*Nos. 06-12-90045/
*06-13-90091/92/93
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M E M O R A N D U M

These consolidated complaints were 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.

These complaints were filed by a pro se prisoner against the district judge who presided over complainant's civil rights action, and against the judges who made up the panel of the court of appeals that affirmed the district judge's judgment in complainant's civil rights action. The named district judge granted summary judgment for the defendants in that civil rights action, and also denied complainant's subsequent motions for relief from that judgment. In his initial complaint of judicial misconduct, complainant contends that statements made by the named judge in his order denying complainant's second motion for relief from judgment were deliberately falsified. Complainant also contends that the named judge's rulings, and the actions of a "court representative" at complainant's deposition, reflect the judge's bias and intent to protect the defendants named in

complainant's civil rights action. In his second complaint of judicial misconduct, complainant contends that the named judges conspired to suppress evidence and obstruct justice by their decision on appeal affirming the district judge's grant of summary judgment.

These complaints are subject to dismissal primarily as directly related to the merits of the named judges' decisions in complainant's underlying civil rights action and subsequent appeal 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 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 the named judges' rulings or to grant relief requested in the underlying civil rights action or appeal. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). These complaints of judicial misconduct are primarily a direct challenge to the merits of the named judges' decisions, and will be dismissed as such.

Otherwise, the complaints are subject to dismissal 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 contentions that the judge who presided over his civil rights action was biased and issued a deliberately erroneous decision in his case are insufficiently supported by credible facts to 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. Review of the available court records reveals that complainant's allegations are devoid of factual support and are inherently incredible. Similarly, complainant's assertions that the judges who decided his appeal conspired to suppress evidence and obstruct justice are conclusory and utterly unsupported. These complaints 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 complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(A) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 1-23-14