

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90094
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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.

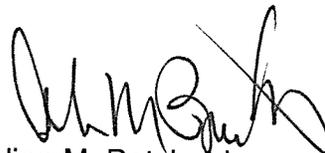
This complaint was filed by a pro se prisoner against a district judge who denied his petition for a writ of habeas corpus in 2001. In his complaint of judicial misconduct, complainant contends that an attorney visited him in prison approximately three years after the named judge denied his habeas corpus petition. Complainant alleges that the attorney guaranteed complainant that he could obtain complainant's release for a fee because he was a friend of the named judge. Complainant surmises that the attorney must have discussed his case with the named judge to produce this guarantee. Complainant notes that he filed two independent actions in which he sought to challenge the denial of his habeas corpus petition, but the named district judge rejected both actions. Complainant seeks recusal of the district judge from his habeas corpus case.

This complaint of judicial misconduct is subject to dismissal in part as directly related to the merits of the named judge's decisions in complainant's habeas corpus proceedings, including his independent actions, 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, including any allegedly improper failure to recuse, 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 relief requested in the underlying cases. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

The complaint is subject to dismissal in remaining part as 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 pertinent court records reveals that complainant's assertions are devoid of factual support in the court record and, particularly in light of those records, are inherently incredible. Complainant is serving a term of life imprisonment without the possibility of parole. After the alleged visit in prison at issue herein, complainant filed several motions seeking relief from the district judge's denial of his habeas corpus petition, plus the aforementioned independent actions. Nowhere did complainant mention the allegations made herein until, contemporaneously with this complaint and over twelve years after the denial of his petition, he moved the district judge to recuse in his second independent action. The named district judge denied the motion because no reasonable person would question the judge's impartiality. Similarly, any reasonable person, in light of the available evidence, would conclude that complainant's assertions are inherently incredible. The complaint therefore 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.

Accordingly, this complaint 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: 08-01-14