

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90096
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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 an attorney concerning a district judge’s failure to rule on her motion to reopen and subsequent motions she filed in a declaratory relief action she originally filed in the district court against state supreme court justices and other defendants in 2006. Review of the pertinent court records reflects that a district judge who subsequently retired from the federal bench granted defendants’ motion to dismiss complainant’s declaratory relief action in 2007, and the Sixth Circuit affirmed that judgment in 2008. After complainant moved to reopen the action in 2013, the matter was assigned to the district judge named herein.

In her complaint of judicial misconduct, complainant objects that, despite the urgency of her situation, the named judge had not ruled on her motion to reopen in nearly

six months and had not ruled on a motion to recuse she filed, including a request for an expedited ruling, in over two months. In a supplemental complaint, complainant notes that, following her complaint of judicial misconduct, the named judge promptly referred the case to a magistrate judge for a report and recommendation. Complainant notes that defendants filed a belated response to several of her motions a short time later, leading complainant to “suspect” that the named judge contacted the defendants to prompt the response or directed someone else to contact the defendants. Complainant contends that the named judge’s actions or failure to act are the result of personal bias in favor of the defendants.

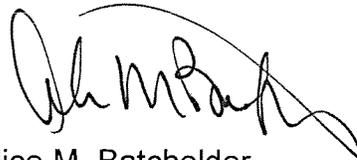
First, this complaint, as supplemented, is subject to dismissal in part as directly related to the merits of the named district judge’s failure to recuse and decision to refer the underlying case to a magistrate judge pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such decisions, including the allegedly improper failure to recuse, 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). It is noted, however, that an acquaintance or even friendship with a defendant does not itself mandate recusal. See *Parrish v. Bd. of Comm’rs of Ala. State Bar*, 524 F.2d 98, 102 (5th Cir. 1975) (en banc). Complainant’s suggestion that the named judge somehow had a pecuniary interest in the outcome of her case because all federal judges are exempted from the payment of bar dues and continuing legal education requirements in her state lacks merit. There simply is no tangible connection between these exemptions and the outcome of complainant’s case. This complaint of judicial misconduct will be dismissed insofar as it directly relates to the merits of the named judge’s decisions in complainant’s case.

The complaint will be dismissed in remaining part 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. First, 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 there was no inordinate delay under the circumstances of complainant’s case. Complainant’s declaratory relief action had been dismissed six years before complainant filed her motion to reopen. The presiding judge had retired from the federal bench, so the motion was of necessity referred to another judge who was not familiar with the case. The delay at issue does not, as complainant suggests, reflect personal bias. Moreover, both the magistrate judge and the named district judge acted promptly following the short delay at issue.

Finally, complainant’s conclusory suspicion that the named judge engaged in improper ex parte communications is unsupported by credible facts that might 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. The court record reveals no factual support for complainant’s suspicion. 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 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 in part 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