

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90128
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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 debtor in a Chapter 7 bankruptcy proceeding against the bankruptcy judge who presided over the proceeding. In her complaint of judicial misconduct, complainant contends that the named bankruptcy judge refused to waive the required filing fee despite her inability to pay. Complainant suggests that the decision may have been motivated by bias or to help the bankruptcy trustee. The named bankruptcy judge has submitted a response to the complaint.

This complaint is subject to dismissal in part as directly related to the merits of the named judge’s decisions in the underlying bankruptcy proceeding 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 a judge's rulings or to grant relief in the underlying bankruptcy. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Insofar as this complaint directly relates to the merits of the named judge's rulings in the underlying case, the complaint will be dismissed in part 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.

Otherwise, complainant's assertions that the named judge's decisions evince either bias or a motivation to benefit the bankruptcy trustee are devoid of factual support and inherently incredible. "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. A review of the available court records reflects nothing that supports complainant's assertions of misconduct. 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 both as directly related to the merits of the named judge's decisions and as lacking sufficient evidentiary basis 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