

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-14-90007  
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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 brought by a prisoner against the district judge who presided over his underlying civil action and denied him leave to proceed in forma pauperis (IFP) under the “three strikes” rule of 28 U.S.C. § 1915(g). Complainant charges the subject judge with “misconduct/disability . . . due to the failure to allow litigation because of imminent danger allegations.” Apparently aware of the prohibition against using the judicial complaint procedure to challenge the merits of a judge’s rulings in underlying proceedings, see 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings, the complainant attempts to cover all of the bases by arguing that by denying his IFP motion, the subject judge “treated [him] egregious[ly], in a hostile manner; engag[ed] in political activity; caused wide-spread lowering of public confidence

in the courts among reasonable people; result[ed] in racial/ethnic bias ruling an[d] resulted in habitual delays.”

A complainant may not use the judicial complaint process to challenge the merits of the subject judge’s decisions in underlying proceedings. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), 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 judge’s rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Complainant’s attempts to dress his challenges in other clothing does not avoid this prohibition: the bulk of his complaint is appropriately dismissed as merits related under 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.

That part of the complaint that alleges improper delay is likewise subject to dismissal. Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process pursuant to Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not shown and cannot show any delay, much less unreasonable or persistent delay. A cursory examination of the docket sheet shows that complainant’s IFP motion was denied two weeks after it was filed, and that all other motions filed by complainant were resolved in a similarly timely manner. Therefore, the complaint is also 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.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rules 3(h)(3)(B) and 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

  
Alice M. Batchelder  
Chief Judge

Date: 08-01-17