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

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In re:	*
Complaint of Judicial Misconduct	*Nos. 06-14-90038/61
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MEMORANDUM

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 medical doctor who lost his license to practice. The complaint names the magistrate judge who was assigned to the civil action in which the complainant attempted to regain his license to practice and the district judge who dismissed that action for failure to state a claim. The complainant focuses on the magistrate judge's actions and non-actions in the underlying proceedings, including her failure to obtain the consent of the parties, to hold various hearings and conferences, to accept as true the allegations in his complaint, and to recuse herself upon his motion to recuse. The complaint also makes broad allegations of bias, alleging that the magistrate judge "attempted to favor her defendants (friend) who she knew socially." The complainant cites the magistrate judge's denial without a hearing of his motion for costs as an example of the "favors" done for friends. The only allegations that the complaint makes against the

district judge who ultimately dismissed this complaint was that the judge was in a "supervisory position" over the magistrate judge and should have intervened to prevent violations of the complainant's rights to due process and access to the courts.

Complainant alleges that one of the many defendants in his underlying action was a "friend" of the subject magistrate judge and alleges that the judge's adverse rulings were thus the result of bias. The complainant does not, however, identify the friend. Complainant's conclusory contentions in this regard 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. Complainant's allegations are devoid of factual support and are thus inherently incredible. The complaint therefore will be dismissed in 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.

The gravamen of the complaint is the complainant's dissatisfaction with the presiding judges' rulings in his underlying cases. The complaint is therefore subject to dismissal as directly related to the merits of the named judges' decisions in complainant's underlying cases 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. The magistrate judge's failure to recuse herself does not change this calculus: a mere allegation that a judge should have recused, as opposed to an allegation that a judge deliberately failed to recuse for illicit reason, is merits related and not cognizable in a complaint of judicial misconduct. *See* 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. 146. To the extent that the magistrate judge's alleged friendship with an unidentified defendant could be an illicit reason for the failure to recuse, those allegations are wholly without factual support. Complainant's contention that the presiding judge should have recused is directly related to the merits, and the remainder of his complaint is subject to dismissal 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.

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

Alice M. Batchelder
Chief Judge

Date: 08-01-14