

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90141
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a prisoner against the district judge who denied his 28 U.S.C. § 2254 petition for a writ of habeas corpus. The gravamen of his complaint is that the subject judge’s rulings in the habeas proceedings, particularly her ruling that his habeas petition was time-barred, were incorrect. He contends that the subject judge’s “improper/illegal ruling[s]” were the result of a conspiracy between the subject judge, the attorney general, and lower court officials. The object of the conspiracy, according to the complainant, was “to protect a State court conviction so foul and error-riddled, infested with police corruption, prosecutor misconduct and ineffectiveness of counsel, that any meaningful review would result in a ‘death blow’ to the State’s case.”

After conducting an initial review, the chief judge may dismiss a complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, “is not 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 judicial office”; (B) that the complaint “is directly related to the merits of a decision or procedural ruling”; (C) that the complaint is “frivolous,” a term that applies to charges that are wholly unsupported; or (D) that the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The part of the complaint that challenges rulings that the subject judge made in the underlying habeas proceedings is subject to dismissal as directly related to the merits of the named judge’s decisions in the underlying proceedings 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 complainant’s challenges to the conduct of the attorney general and lower court officials are not cognizable in these proceedings, which cover only the actions, conduct, or capacity of federal judges. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant’s generic allegations of a conspiracy may be dismissed without further inquiry. “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 bald assertions are inherently incredible, and he neither provides any supporting evidence with the complaint nor points to any in the record. The remainder of the complaint will be dismissed as insufficiently supported by credible facts to warrant either a limited inquiry as authorized by 28 U.S.C. § 352(b) or an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. 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 pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ R. Guy Cole, Jr.
Chief Judge

Date: March 12, 2015