

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90053
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se litigant against the district judge who was presiding over an ongoing civil action that the complainant filed. The gravamen of the complaint is that the subject judge gave the defendants in that action too much time to respond to the complainant's requests for discovery. He attributes that conduct to a "conspiracy," reasoning there could be no other reason for such behavior.

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.

Complainant's generic allegations of 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. That part of the complaint therefore will be dismissed 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 subject judge's rulings in the underlying proceeding. The judicial complaint process may not be used to challenge the merits of judges' decisions. 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). This part of the complaint is therefore subject to dismissal as directly related to the merits, 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.

To the extent the complaint may be read to allege delay in the underlying proceedings, it is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a delay in making a ruling or decision does not constitute misconduct absent a showing of improper motive or habitual delay. The complainant has not attempted to nor can he make such a showing on the record presented here.

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.

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

Date: November 10, 2015