

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90019
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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.

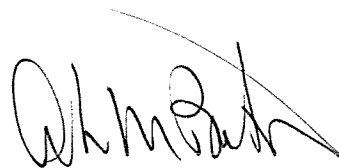
This complaint was filed by the debtor in very contentious Chapter 7 bankruptcy proceedings against the bankruptcy judge who presided over the majority of the proceedings. Complainant contends that the bankruptcy judge blackmailed him and permitted his friends, including the bankruptcy trustee, to embezzle money from the bankruptcy estate. Even read indulgently, the gravamen of this complaint of judicial misconduct is that the named judge made erroneous rulings or failed to correct errors in complainant’s underlying bankruptcy proceedings.

Under these circumstances, this complaint is subject to dismissal in part as directly related to the merits of the named judge’s decisions in complainant’s bankruptcy 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 Judicial Council is not a court and has no jurisdiction to review any rulings by a judge, or to grant relief requested in the underlying bankruptcy proceedings. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Complainant's allegations largely are direct challenges to the merits of the bankruptcy judge's decisions in his case and are therefore not a proper subject of a complaint of judicial misconduct.

Otherwise, complainant's contentions that the named judge acted improperly in the bankruptcy proceedings 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 contentions that the named judge acted improperly are devoid of factual support in the court record and are inherently incredible, particularly in light of the evidence available of record. The record reflects that complainant's attorney initiated the underlying involuntary bankruptcy proceedings after many years of litigation of complainant's divorce proceedings in state court. Simply put, the record belies complainant's contentions that the named judge acted improperly or allowed improprieties to occur in the bankruptcy proceedings. 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.

Accordingly, this complaint will be dismissed 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: 03-25-14