

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-13-90023
*
*
*
*

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 a federal prisoner against the district judge who presided over his criminal trial in 2012. A jury found complainant guilty of conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine, and the named district judge subsequently sentenced complainant to life imprisonment. In his complaint of judicial misconduct, complainant objects to rulings made by the named judge, particularly his decision to remove a juror after deliberations had begun, and shortly after the judge had instructed the jury to continue deliberations after they indicated that they had reached an impasse. Complainant contends that the named judge is racially biased, as evidenced by the fact that the removed juror is black and the alternate juror is white.

This complaint of judicial misconduct is subject to dismissal in part as directly related to the merits of the named judge's decisions in complainant's criminal case 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 case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). In fact, court records reflect that counsel for complainant on direct appeal briefed complainant's claim that the judge improperly excused the juror at issue, but did not assert that the decision was racially motivated. Thus, complainant's claim, at least in part, was properly raised before the court that has jurisdiction to review the judge's decisions. However, complainant's direct challenges to the merits of the named judge's rulings in his case are not a proper subject of a complaint of judicial misconduct and will be dismissed as such in part.

Otherwise, complainant's contention that the named judge was biased is 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. Aside from the fact that the excused juror was black and that the alternate juror was white, a fact that the named judge himself noted for the record, complainant's assertion of bias is devoid of factual support in the court record and is inherently incredible. 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 Rule 11(c)(1)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 03-25-14