

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-13-90102
*
*
*
*

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 pro se litigant against a district judge who presided over a civil action complainant filed in the district court. Complainant contends that the named district judge rescheduled a conference concerning the case, then cancelled the rescheduled conference after complainant moved to disqualify the judge on the basis of the rescheduling order. Complainant contends that the named judge’s conduct was uncivil and obstructed and delayed justice in his case. A review of the pertinent court records reveals that, after complainant filed this complaint of judicial misconduct, the named district judge promptly denied complainant’s motion for disqualification and other pending motions.

First, this complaint is subject to dismissal in part as directly related to the merits of the named district judge’s denial of complainant’s motion to disqualify 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, including any allegedly improper failure to recuse, are not the proper subject of a complaint of judicial misconduct. 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 in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

Moreover, the complaint is also subject to dismissal as “lacking sufficient evidence to raise an inference that misconduct has occurred” 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. First, Rule 3(h)(3)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings specifically provides that a delay in making a ruling or decision, without more, does not constitute misconduct cognizable in the judicial complaint process. Review of the available court records reveals no inordinate or inappropriate delay. Any delay at issue does not, as complainant suggests, reflect incivility or obstruction of justice. The complaint therefore will also be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) and 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed in part as directly related to the merits of the decisions of the named district judge pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rules 3(h)(3)(A) & 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and as lacking sufficient evidence to infer that misconduct occurred pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rules 3(h)(3)(B) & 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.



Alice M. Batchelder
Chief Judge

Date: 08-01-14