

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

In re:
Complaint of Judicial Misconduct

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*No. 06-13-90129
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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.

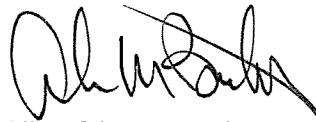
This complaint was filed by a pro se prisoner against the district judge who dismissed complainant's petition for a writ of habeas corpus. In his initial complaint of judicial misconduct, complainant contends that the named district judge's ruling in his case was erroneous and that his case was not expeditiously decided. Complainant suggests that the named judge's ruling was the product of mental disability or bias.

This complaint is subject to dismissal in part as directly related to the merits of the named judge's ruling in complainant's underlying habeas corpus proceeding 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 the named judge's ruling or to grant the relief requested in the underlying habeas corpus proceeding. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). Complainant's challenges to the named judge's ruling directly relate to the merits of the ruling. Under these circumstances, this complaint will be dismissed in part 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.

Complainant's remaining contentions 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. Review of the available court records reveals that complainant's suggestions of mental disability and bias are devoid of factual support and are inherently incredible. Nor does the record reflect anything more than ordinary delay in making a ruling in complainant's case. Accordingly, the delay alleged does not constitute misconduct cognizable in the judicial complaint process. See Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability 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.

For these reasons, this complaint will be dismissed as directly related to the merits of the named judge's decision and as lacking sufficient evidentiary basis 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: 08-01-14