

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

In re:
Complaint of Judicial Misconduct

*
*
*Nos. 06-14-90069/70
*
*
*
*

M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se litigant against a magistrate judge who had been assigned to two of his underlying civil cases and the district judge who dismissed one of them. The complainant argues that the subject judges were biased against him, citing as evidence of that bias the adverse rulings that the judges made in the underlying cases.

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.

Although a claim that a judge is biased against a litigant is not necessarily related to the merits, such a claim must nevertheless be supported by credible facts. The only evidence that complainant cites in support of his bias claim is the subject judges’ adverse rulings. Complainant’s conclusory contentions of bias are thus 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 allegations are devoid of factual support and are thus inherently incredible. The complaint therefore will be dismissed in 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.

The gravamen of the complaint is the complainant's dissatisfaction with the presiding judges' rulings in his underlying cases. The complaint is therefore also subject to dismissal as directly related to the merits of the named judges' decisions in complainant's underlying cases 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 judges' rulings or to grant relief requested in the underlying cases. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

For these reasons, this complaint is 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.

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

Date: October 30, 2014