

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90111
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant is a federal prisoner who was sentenced by the subject judge in 2007. The complainant alleges that the subject judge made a racially charged statement during his sentencing proceeding, and that such statement demonstrates not only racial bias but a personal bias that resulted in his case in an excessive sentence.

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.

Complainant alleges that the subject judge made the following statement in open court during his 2007 sentencing hearing: “When I was a younger woman and saw a black doctor, I said that he had done something for himself, and was a credit to his race. But you, Dr. [redacted] you are the worse ole [sic] ‘nigger’ that I have ever seen in my life.” A review of the sentencing transcript does not reveal the use of the offensive word or anything else that could be characterized as evidencing racial bias on the part of the subject judge. The subject judge made a single statement referring to the complainant’s race at the sentencing hearing:

You’re 61 years old, so you kind of grew up when I did. For a black man to complete medical school was an achievement. In my life as I looked at black men who were doctors and people who considered them, it isn’t

that you were admired, you were almost revered, and yet you took that trust that people would have for you and just absolutely threw it back at them.

That statement could not be interpreted as evidence of racial or personal bias.

The complainant insists that the allegedly offending statement was made in open court during his sentencing hearing. He does not allege that the court reporter selectively reported what was said in court or that the transcript was somehow forged or altered. Thus, his allegations are insufficiently supported by credible facts to warrant either a limited inquiry as authorized by 28 U.S.C. § 352(b) or an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. And they are belied by the transcript. Complainant's bald allegations may thus be dismissed without further inquiry. "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 belied by the record, and he neither provides any supporting evidence with the complaint nor points to any in the record. His allegations therefore will be dismissed 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, it is **ORDERED** that the complaint be dismissed 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.

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

Date: March 29, 2018