

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-18-90009/10
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] and the Honorable [REDACTED] (“subject judges”), pursuant to 28 U.S.C. § 351. The subject judges are currently presiding over an ongoing civil action in which the complainant asked the court to remand a state court appellate case that had been decided against him. He identifies a laundry list of alleged misconduct by the subject judges, including failing to grant three-judge review, citing “invalid, immaterial, and irrelevant” authorities, failing to recuse, committing perjury, and “theft in office.” He also alleges that “this court has not responded to motions on a timely basis.”

After conducting an initial review, the chief judge may dismiss a misconduct 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”; (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; see 28 U.S.C. § 352(a), (b).

Most of the allegations in the complaint center on the complainant’s dissatisfaction with the rulings made by the subject judges in the underlying proceedings. His “theft” allegation is based on the fact that he paid a filing fee along with his complaint; apparently, he believes that the unsatisfactory rulings made by the subject judges deprived him of the value of that fee and therefore constitute theft. The judicial complaint process may not be used to challenge the merits of judicial rulings made in underlying proceedings. 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 case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir.

1988). This part of the complaint is therefore subject to dismissal as directly related to the merits of the named judges' decisions in the underlying proceedings, 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 bald allegations of perjury 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. "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. This part of the complaint 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.

To the extent that the complainant is alleging delay on the part of the subject judges ("this court has not responded to motions on a timely basis"), those allegations are belied by the record of the underlying proceedings. An examination of the record shows that at the time the complaint was filed, the underlying case had been pending less than four months. Because the complainant's allegations of delay thus lack sufficient evidence to raise an inference that misconduct occurred, this part of the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D).

Accordingly, it is **ORDERED** that the complaint 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.

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

Date: July 11, 2018