

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

In re:
Complaints of Judicial Misconduct

*
*
*Nos. 06-18-90085/86
*
*
*
*

MEMORANDUM AND ORDER

These complaints of judicial misconduct were filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] (“subject judge 1”), and the Honorable [REDACTED] (“subject judge 2”), pursuant to 28 U.S.C. § 351. The complainant is a state prisoner who challenged his conviction in federal court via a petition for habeas corpus and also filed a civil suit against the state court judge who accepted his guilty plea and imposed sentence. Subject judge 1 is the district court judge who presided over and ultimately denied both of those underlying actions, and subject judge 2 is the magistrate judge to whom both cases were referred.

In complaint number 06-18-90085, the complainant contends that subject judge 1 was a long-time personal friend of the state court judge who accepted the complainant’s plea and imposed his sentence. The complainant cites this friendship as evidence that subject judge 1 conspired with his friend to deny the complainant relief in both of the underlying cases. The complainant also challenges specific rulings made by subject judge 1 in the underlying matters, including the denial of several motions to recuse and to transfer the habeas proceedings and the final order denying habeas relief. He argues that these rulings were attributable to improper motive on the part of subject judge 1, i.e., protecting his friend, the state-court judge. The complainant points to the following language in the order denying habeas relief as evidence of improper motive: “Petitioner has introduced a ‘new’ challenge to the voluntary nature of his plea: he claims that he did not know he was pleading to conspiracy, believing instead that he was pleading to two counts of false pretenses.”

Complainant also points to a later passage in that order where subject judge 1 called the claim disingenuous, and the order’s lack of “specific findings except for the bending of the truth,” as further evidence of improper motive.

In complaint number 06-18-90086, the complainant contends that subject judge 2 conspired with subject judge 1 and the state court judge to deny relief in both cases. He points specifically to two rulings made by subject judge 2 in the habeas

proceedings, both of which rejected for filing motions proffered by the complainant, and argues that both rulings were motivated by the subject judge 2's participation in the conspiracy, the purpose of which was to deny complainant relief in the underlying matters.

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.

Accepting as true that subject judge 1 and the state court judge who sentenced the complainant are friends, the allegations of conspiracy are nevertheless conclusory and speculative. A review of the record shows no independent or corroborating evidence of conspiracy, and the specific rulings of the subject judges that the complainant points to refute any allegation that those rulings were themselves improper, much less improperly motivated. The part of subject judge 1's order denying habeas relief that complainant quotes is an accurate representation of the record and the complainant's pleadings in the matter below. And subject judge 2's rejection of two pleadings that the complainant attempted to file in the underlying habeas actions after jurisdiction was transferred to the court of appeals pursuant to complainant's notice of appeal were entirely proper under the applicable law and rules of procedure. Complainant's allegations of conspiracy are thus 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. Complainant's allegations are inherently incredible, particularly in light of the other available evidence. 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 true gravamen of these complaints are specific rulings made by the subject judges in the underlying proceedings. Such matters 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. And the complainant may not avoid this stricture by couching his challenge to such rulings in the language of conspiracy without any credible supporting evidence thereof. In any event, as discussed above, the rulings that complainant is attempting to challenge were entirely proper. Viewed in their true

light—as transparent attempts to challenge the merits of rulings made by the subject judges in the underlying proceedings—these complaints would be dismissible under 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.

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: February 6, 2019