

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-13-90136
*
*
*
*

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 against the bankruptcy judge who presided over complainant's wife's Chapter 7 bankruptcy proceeding filed in 1999. The bankruptcy estate included a cause of action that resulted in a substantial payment to the estate in 2001, which the bankruptcy trustee distributed, including substantial amounts paid to complainant's wife. The bankruptcy trustee neglected to file tax returns for the estate, but the estate nonetheless was closed in 2004. The bankruptcy was reopened in 2007 after an Internal Revenue Service audit of the estate disclosed substantial liabilities. The named bankruptcy judge then permitted the bankruptcy trustee to conduct an examination of complainant, his wife, and their son regarding the amounts that had been paid to complainant's wife.

In his complaint of judicial misconduct, complainant contends that the bankruptcy trustee filed his motion to examine the complainant in retaliation for a bar complaint complainant filed against the trustee. Complainant contends that the trustee had not been reappointed when he filed the motion or when the named bankruptcy judge granted his motions to examine complainant and his wife. Complainant contends that the named bankruptcy judge should have recused.

This complaint is subject to dismissal as directly related to the merits of the named judge's decisions in the underlying bankruptcy 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, including any allegedly improper failure to recuse, 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 a judge's rulings or to grant relief in the underlying bankruptcy. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). This complaint directly relates to the merits of the named judge's decisions in the underlying bankruptcy proceedings, and the complaint will be dismissed 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.

For these reasons, the complaint will be dismissed as directly related to the merits of the named judge's decisions 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.



Alice M. Batchelder
Chief Judge

Date: 08-01-14