

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90086
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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 complaint alleges that the subject judge committed misprision of felony by failing to report that another judge committed misprision of felony.

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).

An initial review of the record reveals that the complainant filed a petition for a writ of habeas corpus that was assigned to the subject judge. The subject judge denied the petition, and the complainant moved for reconsideration. In a supplement to his motion for reconsideration, the complainant argued that the prosecutor in his underlying criminal contempt proceeding—an attorney from the Office of the United States Trustee—was not a duly appointed Special Assistant United States Attorney. The subject judge denied the motion for reconsideration.

Documents submitted by the complainant demonstrate that the attorney had been appointed as a Special Assistant United States Attorney; those documents do not establish whether the appointment remained in effect at the time of the complainant’s trial. The complainant contends that the attorney committed the felony offense of impersonating a federal officer in order to obtain a thing of value. See 18 U.S.C. § 912. He further contends that the judge in his contempt proceeding committed misprision of felony by concealing and failing to report that offense. See 18 U.S.C. § 4. Finally, he contends that the subject judge committed misprision of felony by concealing and failing to report the first judge’s misprision of felony. See *id.*

The record does not support these contentions. In particular, the record does not establish that the attorney's appointment had expired, that the attorney nonetheless represented himself as a Special Assistant United States Attorney, that the attorney did so in order to obtain a thing of value, that the judge in the contempt proceeding knew all of this, or that the subject judge knew it and knew that the first judge had failed to report it. The complaint is thus subject to dismissal under Rule 11(c)(1)(C) as wholly unsupported by the record. See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

For these reasons, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: April 6, 2017