

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90088
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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 the prosecutor at the complainant’s criminal contempt trial was not a duly appointed Special Assistant United States Attorney. A supplement to the complaint alleges that the subject judge caused the complainant’s post-conviction petition for a writ of habeas corpus to be reassigned to the subject judge.

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 was tried by a jury and convicted of criminal contempt in connection with his failure to comply with several orders of a bankruptcy court. The subject judge presided over the trial. The government was represented at trial by an attorney from the Office of the United States Trustee. 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 trial. The record also reflects that the complainant filed a post-conviction petition for a writ of habeas corpus that was reassigned to the subject judge as a case related to the underlying criminal case. Both the originally assigned judge and the subject judge signed the order reassigning the case.

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 subject judge committed misprision of felony by concealing and failing to report that offense. See 18 U.S.C. § 4. 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, or that the subject judge had knowledge of such facts. 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).

To the extent that it alleges that the subject judge caused the complainant's habeas corpus petition to be reassigned, the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The mere fact that the case was reassigned to the subject judge does not support an inference of misconduct.

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) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: April 6, 2017