

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90076
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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 improperly appointed counsel for the bankruptcy trustee in a Chapter 7 proceeding and acted in concert with that counsel to deprive a non-party foundation of its assets. The complaint alleges that the subject judge is biased against the debtor and the non-party foundation and that the subject judge suppressed evidence, altered a court order, and delayed resolution of the Chapter 7 proceeding. In addition, the complaint alleges that the subject judge was hostile toward the foundation’s attorney.

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 debtor filed a Chapter 7 petition in 2014. In that proceeding, the debtor argued that he had transferred all of his assets to a foundation in 2004, such that he had no assets for the bankruptcy trustee to administer. The subject judge rejected that argument, found to the contrary that the debtor treated the foundation’s assets as his own, and ordered that the foundation’s assets be turned over to the trustee as property of the bankruptcy estate.

This misconduct complaint primarily challenges the substance of the subject judge’s order regarding turnover of the foundation’s assets. To that extent, the

complaint is subject to dismissal under Rule 11(c)(1)(B). See also 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge's rulings is outside the scope of judicial-misconduct 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 any decision by a judge or panel of judges. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

To the extent that it alleges impropriety in appointing the trustee's counsel, suppression of evidence, bias, delay, and hostility on the part of the subject judge, the complaint is wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). See also 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that it alleges alteration of a court order, the complaint is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). The complainant correctly observes that the order requiring turnover of the foundation's assets contains a sentence that is printed in a different font than the remainder of the order. The sentence also appears to be factually inaccurate insofar as it misstates the number of witnesses that testified at the hearing on the turnover motion and omits the name of one witness. But that is all that the record shows. There is no evidence that the turnover order was altered after entry or that the apparent inaccuracy affected the disposition of the motion or otherwise prejudiced any party. In these circumstances, no inference of misconduct can be drawn.

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

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

Date: November 28, 2017