

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

In re:
Complaint of Judicial Misconduct

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*No. 06-19-90042
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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 engaged in improper ex parte communications, that the judge is biased against the complainant, and that the judge “manipulate[d] the evidence” in a criminal proceeding against the complainant. The complaint further alleges that the subject judge assisted the prosecution in the criminal proceeding and, in return, received funds that were seized in connection with that proceeding.

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 motion for the return of seized property. The motion was docketed as a civil case because criminal proceedings against the complainant had not yet been initiated, and the case was assigned to the subject judge. The government opposed the motion on the grounds that the criminal investigation was ongoing and the seized property was needed as evidence. The subject judge denied the motion on that basis. The complainant renewed his motion about six months later, and the subject judge again denied it, noting that the complainant had recently been indicted. In the ensuing criminal proceeding, which also was assigned to the subject judge, the complainant was convicted of multiple offenses and sentenced to imprisonment, supervised release, and restitution. The subject judge later granted the government’s motion for an ex parte order requiring funds that had been seized from the complainant to be applied toward the complainant’s

restitution obligation. Shortly thereafter, the complainant moved in the civil case for reconsideration of the denial of his motion for return of property. The subject judge denied the motion for reconsideration.

To the extent that this judicial-misconduct complaint challenges the subject judge's rulings on the various motions relating to the seized property, it 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 4(b)(1), 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. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

The non-merits-related allegations of the complaint are subject to dismissal under Rule 11(c)(1)(C) & (D). See also 28 U.S.C. § 352(b)(1)(A)(iii). The record contains no evidence that the subject judge engaged in improper ex parte communications or otherwise collaborated with the prosecution in the complainant's criminal case. Nor does the record reflect bias or manipulation of evidence. And the record contradicts the allegation that the subject judge received funds that were seized from the complainant. The subject judge ordered that those funds be applied to the complainant's restitution obligation.

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: April 9, 2020