

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

In re:
Complaint of Judicial Misconduct

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*No. 06-19-90084
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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 “was hostile, impertinent, and disrespectful” to the complainant, a witness at a supervised release revocation hearing. According to the complainant, the subject judge “cut [her] off, put words in [her] mouth, . . . judged [her] not to be a credible witness,” and “called [her] names.” The complaint also alleges that the subject judge retaliated against the complainant by instructing a contracting officer in the U.S. Probation Office not to enter contracts with her.

After conducting an initial review, the chief judge may dismiss a complaint of judicial misconduct 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, a marriage and family therapist, testified for the defendant at a supervised release revocation hearing that was held before the subject judge. The hearing transcript reflects that the subject judge questioned the complainant in a manner demonstrating skepticism about her testimony, which largely concerned the defendant’s likelihood of reoffending and need for supervision. In comments accompanying the announcement of the sentence, the subject judge expressed disagreement with the complainant’s testimony, stated that he discounted her testimony, characterized the complainant as an “enabler” of the defendant, and said that he would not recommend that the defendant obtain further therapy from the complainant.

Treating a witness “in a demonstrably egregious and hostile manner” constitutes cognizable judicial misconduct. Rule 4(a)(2)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The subject judge’s conduct here does not meet that standard. The judge made it clear that he did not find the complainant’s testimony persuasive and that he did not think her therapy was helpful. But he “did not use demeaning language or heap abuse” on the complainant. *In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1099 (9th Cir. Jud. Council 2014). The record does not reflect, for example, the name-calling alleged by the complainant. To the extent that the complaint accurately characterizes the subject judge’s comments, it is subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. To the extent that the complaint’s allegations are inconsistent with the transcript, it is subject to dismissal under Rule 11(c)(1)(C). See also 28 U.S.C. § 352(b)(1)(A)(iii).

The complaint’s allegation that the subject judge instructed a contracting officer not to enter contracts with the complainant is subject to dismissal under Rule 11(c)(1)(D). See also 28 U.S.C. § 352(b)(1)(A)(iii). A limited inquiry into the factual basis for the allegation established that the subject judge did not so instruct the contracting officer.

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

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

Date: November 13, 2020