

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90007/08
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a prisoner who is currently litigating a 42 U.S.C. § 1983 action in the district court. He names the district judge and magistrate judge who are assigned to his case, and argues that they improperly calculated and assessed the filing fee associated with § 1983 cases rather than the fee associated with habeas cases. The complaint he filed in the district court was premised on the excessive heat in his prison cell, which, he alleged, resulted in a three-day hospitalization. He characterized the complaint as a “Batson Challenge/Extraordinary Writ/Habeas Corpus 1983 USC 28 [sic].”

After conducting an initial review, the chief judge may dismiss a 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 and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office”; (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.

The complaint is subject to dismissal as directly related to the merits of the named judges’ decisions in complainant’s underlying proceedings pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such decisions are not the proper subject of a complaint of judicial misconduct. 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 the named judges’ rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988). In any event, the complainant is mistaken. His complaint sounded in 42 U.S.C. § 1983, for which the filing fee is \$400.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: April 1, 2015