

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

In re:
Complaint of Judicial Misconduct

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*No. 06-15-90050
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the district judge who was assigned to his civil-rights action. The complaint alleges that the district judge erred in dismissing one defendant from the action and that the district judge did not “assist [the complainant] in identifying the correct defendants.”

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.

A review of the district-court record reveals that the district judge dismissed a municipal defendant from the complainant’s civil-rights action and instructed the clerk to send the complainant a service packet for the remaining defendant, a police officer. The complainant returned the packet, the district court issued a summons, and the United States Marshal’s Office served the defendant officer. The action remains pending.

This complaint is subject to dismissal under Rule 11(c)(1)(B) insofar as its allegations are directly related to the merits of the district judge’s dismissal order. See *also* 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge’s decisions 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 ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

To the extent that it alleges a failure to assist the complainant in identifying the correct defendants, the complaint is subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complainant's civil-rights complaint does not allege acts by any unknown defendants. The only acts alleged are those of a single police officer, against whom the district judge allowed the case to proceed. Nothing in the record suggests that there are additional defendants that the district judge should have helped the complainant identify.

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

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

Date: August 28, 2015