

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-15-90054/55
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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 and magistrate judge who were assigned to his civil-rights action. The complainant alleges (1) that the subject judges required him to file his complaint on the form for 42 U.S.C. § 1983 complaints, despite his intent to proceed under 18 U.S.C. § 242; (2) that the district judge then dismissed the § 1983 complaint; and (3) that the magistrate judge rejected his post-judgment motion to reinstate the case as an action under § 242.

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 magistrate judge construed the complainant’s action, styled as a “criminal complaint . . . under 18 [U.S.C.] § 242,” as a civil-rights action brought under 42 U.S.C. § 1983. The magistrate judge ordered the complainant to file an amended complaint on the form for prisoner civil-rights complaints, in accordance with the local rules. The complainant objected, but the district judge upheld the magistrate judge’s order. The complainant then filed an amended complaint, naming two state judges as defendants. The district court dismissed the action on the basis of judicial immunity. The complainant tendered a motion for reinstatement of his case under § 242 and requested the appropriate form, but the magistrate judge rejected the motion because the case was closed.

This complaint is subject to dismissal under Rule 11(c)(1)(B) because it is directly related to the merits of the subject judges' orders. 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).

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: November 10, 2015