

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

In re:
Complaint of Judicial Misconduct

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*No. 06-16-90028
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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 summarily rejected the complainant’s claim that an opposing party had submitted a fraudulent affidavit to the court. The complaint further alleges that the subject judge acted out of bias against the complainant.

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 objected to a case management order that had been entered in his civil-rights action. The defendant in the action responded to the complainant’s objection and submitted an affidavit in support of its response. The complainant then moved to strike the affidavit, arguing, among other things, that it was “not factually based.” The subject judge denied the motion to strike because the affidavit was “properly notarized and demonstrate[d] that the affiant had personal knowledge of the matters asserted.” Concluding that the complainant would not be entitled to relief even under his own version of the facts, the judge did not explicitly resolve any factual disputes relating to the substance of the affidavit.

This judicial-misconduct complaint challenges the propriety of the subject judge’s decision to deny the complainant’s motion to strike. Accordingly, 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 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 decision by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

The complaint's allegations of bias are wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complaint alleges, and the record contains, no facts demonstrating bias on the part of the subject judge.

For these reasons, 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) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: December 16, 2016