

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90042
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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 complainant alleges that the subject judge improperly dismissed his civil-rights action.

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 subject judge was assigned to the complainant’s civil-rights action. The complainant filed a motion for leave to proceed in forma pauperis (“IFP”), an uncertified prisoner trust fund account statement, and a declaration stating that a prison staff member had refused to certify the account statement as required by statute. The subject judge denied the IFP motion because the account statement was not certified. The judge then dismissed the action without prejudice to reinstatement upon the filing of a Federal Rule of Civil Procedure 59(e) motion and a properly supported IFP motion. The complainant filed a new IFP motion and a certified account statement, but he did not file an accompanying Rule 59(e) motion. The subject judge denied the new IFP motion as moot.

The complainant alleges that the subject judge made an improper factual finding that the prison staff member had not refused to certify the complainant’s account statement and that the judge improperly dismissed the action on that basis. Because these allegations are directly related to the merits of the subject judge’s decision, the judicial-misconduct complaint 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 complainant's remedy was an appeal to the court of appeals.

For these reasons, it is **ORDERED** that the complaint 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: August 4, 2017