

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90072
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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 concluded the trial of the complainant’s civil action without allowing him to examine the defendants and without allowing the jury to determine the facts. It further alleges that the subject judge received gifts from the defendants, gave them special treatment, and treated him with hostility.

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 filed a civil action that was assigned to the subject judge. The case went to trial before a jury. At the conclusion of the complainant’s presentation of evidence, the defendants moved for judgment as a matter of law, and the subject judge granted the motion.

In substantial part, this complaint is subject to dismissal under Rule 11(c)(1)(A) because a judge’s disposition of an action on a motion for judgment as a matter of law, without presentation of evidence by the defendants or submission of the case to the jury, does not constitute misconduct. To the contrary, disposition of an action in that manner is expressly contemplated by Rule 50(a) of the Federal Rules of Civil Procedure.

To the extent that this complaint challenges the substance of the subject judge's decision to grant judgment as a matter of law, 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 or panel of judges. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988).

Finally, to the extent that it alleges receipt of gifts, bias, and hostility on the part of the subject judge, the complaint is wholly unsupported and thus subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, 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)(A), (B) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: November 28, 2017