

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90112
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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 should have disqualified himself, due to conflicts of interest, from a civil action that the complainant filed. More generally, the complaint alleges a conspiracy involving the subject judge, another federal judge, a law firm at which both judges once worked, and a university that the law firm represented. The complaint “speculat[es]” that the subject judge “threw” the civil action because of his connections to the other judge, the law firm, and the university.

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 defendants included the university’s board of trustees and several university employees. The other federal judge was not named as a defendant, but the complainant alleged that the judge had “thrown” a related action that had come before him. The subject judge dismissed the complainant’s action, sua sponte, for failure to state a claim upon which relief could be granted.

The main allegation of this misconduct complaint is that the subject judge dismissed the complainant’s civil action in order to protect the other federal judge and the university, and because of his connections to them and to the law firm. To the

extent that it challenges the merits of the dismissal order and the subject judge's failure to disqualify himself, the 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).

To the extent that it alleges conspiracy on the part of the subject judge, the complaint lacks sufficient evidence to support an inference of misconduct and thus is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The complaint alleges that the subject judge and the other federal judge had worked for the same law firm, that the law firm had represented the university, and that the subject judge had given a speech at the university. These allegations, assumed to be true, are insufficient to support a finding that the subject judge dismissed the complainant's action for an improper reason. Indeed, the complainant acknowledges that his allegations about the subject judge's motives amount to "speculation."

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)(B) & (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: March 29, 2018