

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

In re:
Complaint of Judicial Misconduct

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*No. 06-17-90142
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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, a pro se litigant, alleges that the subject judge held her to a higher standard than opposing counsel, “chastise[d]” her for filing an untimely pleading, failed to grant her unopposed motion for summary judgment, and improperly granted the opposing party’s motion to dismiss. The complainant attributes these actions to bias based on her race and economic status.

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 defendant filed its answer, and the complainant, without seeking leave, filed an amended complaint outside of the time to amend as a matter of right. The defendant filed a motion to dismiss the original complaint. The complainant filed motions for summary judgment and other relief, to which the defendant did not respond. The subject judge advised the parties that it would consider the pending motions and inform them if additional responses were needed. The subject judge then entered orders in which he declined to consider the complainant’s untimely amended complaint, granted the defendant’s motion to dismiss, and denied the complainant’s motions as moot.

To the extent that this misconduct complaint is based on the subject judge's granting of the defendant's motion to dismiss and denial of the complainant's motions, 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).

To the extent that it alleges unequal treatment and bias, the complaint is entirely unsupported by the record and thus is subject to dismissal under Rule 11(c)(1)(C). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). The record does not reflect any chastisement of the complainant for filing her amended complaint out of time; the subject judge simply stated that the amended complaint would not be considered because of the complainant's failure to adhere to the Federal Rules. Likewise, nothing in the record suggests that the subject judge held the complainant to a higher standard or that his rulings were motivated by bias.

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

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

Date: June 8, 2018