

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-18-90018
*
*
*
*

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 improperly dismissed the complainant’s civil action and improperly denied him the right to appeal in forma pauperis. The complaint also alleges that the subject judge acted as an advocate for the defendants in the civil action and was prejudiced against the complainant because he proceeded pro se.

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’s civil action was assigned to the subject judge. The subject judge granted the complainant’s motion for leave to proceed in forma pauperis, dismissed the action for failure to state a claim, and certified that an appeal could not be taken in good faith.

This misconduct complaint is based solely on the subject judge’s decision to dismiss the complainant’s action and certify that an appeal could not be taken in good faith. Accordingly, 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 ruling 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 the complaint alleges bias and prejudice on the part of the subject judge, it is entirely unsupported by the record 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)(B) & (C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: September 10, 2018