

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-18-90076/77
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by [REDACTED] (“complainant”) against the Honorable [REDACTED] and the Honorable [REDACTED] (“subject judges”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judges erred in denying the complainant’s motion for entry of default and default judgment, overruling his objections to that denial, and denying his motion for recusal. The complaint further alleges that the subject judges engaged in ex parte communication with the defendants in the complainant’s civil 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 complainant filed a civil action that was assigned to the subject judges. The complainant moved for entry of default and default judgment, and the subject magistrate judge denied the motion. The complainant objected to that ruling, and the subject district judge overruled his objections. The subject district judge later denied the complainant’s motions for reconsideration and for recusal.

To the extent that this judicial-conduct complaint alleges that the subject judges erred in denying the complainant’s motions and overruling his objections, it is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the subject judges’ rulings. 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 the complaint alleges ex parte communication and other improprieties, it is subject to dismissal under Rule 11(c)(1)(C) because the allegations are entirely unsupported by the record. See also 28 U.S.C. § 352(b)(1)(A)(iii). The complainant has identified no factual basis for these allegations.

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: January 9, 2019