

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-18-90098
*
*
*
*

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 warned the complainant, a pro se litigant, against filing frivolous motions in an ongoing 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 judge. In an order that disposed of six motions filed by the complainant, as well as several motions filed by the defendants, the subject judge stated that many of the complainant’s motions were “patently frivolous” and cautioned him that continued filing of frivolous motions would result in sanctions. The subject judge also noted that the complainant would benefit from the assistance of counsel but that he had “chosen to prosecute [the] action [pro se].”

The gist of the allegations of this misconduct complaint is that the subject judge’s warning was unmerited. The complainant asserts that he has tried to retain counsel, contrary to the judge’s statement that he “chose[]” to proceed pro se. The complainant further notes that the subject judge did not identify the specific motions that were frivolous, leaving him “to wonder which motions the Judge was referring to.”

The subject judge’s characterization of the facts, assessment of the merits of the complainant’s motions, and specificity—or lack thereof—in explaining that assessment

are all matters that relate directly to the merits of the subject judge's order. So is the overarching question of whether the judge's warning was merited. The misconduct complaint is thus 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).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: June 3, 2019