

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

In re:
Complaint of Judicial Misconduct

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*Nos. 06-18-90126/127
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judges”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judges made factual errors in a report and recommendation and a memorandum opinion and order, thereby impugning the accuracy of an affidavit prepared by the complainant and, accordingly, the complainant’s credibility and integrity.

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 submitted an un-notarized affidavit in support of a motion that the government filed in a criminal case. In a report and recommendation on the government’s motion and other matters, the subject magistrate judge found the affidavit to be contradicted by other evidence, not credible, and made in bad faith. In a memorandum opinion and order, the subject district judge agreed that statements in the affidavit were contrary to other evidence and concluded that “the Magistrate Judge did not err in giving [the] affidavit little credit.”

The gravamen of this judicial-misconduct complaint is that the subject judges misinterpreted the evidence, mischaracterized the complainant’s affidavit, and, as a result, made erroneous findings as to the accuracy and credibility of the affidavit. This challenge to the subject judges’ findings and conclusions is subject to dismissal under Rule 11(c)(1)(B) as directly related to the merits of the judges’ rulings. See also 28 U.S.C. § 352(b)(1)(A)(ii). Any challenge to the merits of a judge’s determinations 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 claimed factual or legal errors 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: July 25, 2019