

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

In re:
Complaint of Judicial Misconduct

*
*
*Nos. 06-14-90101/102
*
*
*
*

M E M O R A N D U M

This complaint of judicial misconduct was filed by a pro se prisoner against the district and magistrate judges who have dismissed some of the claims and parties in his ongoing civil action. He complains principally about the subject judges' rulings in the underlying case, challenging the district judge's partial overruling of one of the magistrate judge's reports and recommendations, the denial of various discovery motions and a motion for appointment of counsel, and the grant of summary judgment to one of the defendants. He also contends that the district judge "advised [the magistrate judge] that henceforth [the complainant] should not receive any more significantly favorable rulings."

After conducting an initial review, the chief judge may dismiss a 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 and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office"; (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.

The complaint is subject to dismissal as directly related to the merits of the named judges' decisions in the underlying proceedings 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. Such decisions are not the proper subject of a complaint of judicial misconduct. 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 the named judges' rulings or to grant relief requested in the underlying case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

The allegation that the subject district judge instructed the subject magistrate judge not to rule in the complainant's favor is without any support in the record, and the complainant points to no extra-record evidence that would support that allegation. Because that allegation is wholly unsupported, the complaint is also subject to dismissal under Rule 11(c)(1)(C) and 28 U.S.C. § 352(b)(1)(A)(iii).

For these reasons, the complaint will 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: December 22, 2014