

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-14-90138
*
*
*
*

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 judge who presided over his civil-rights action filed under 42 U.S.C. § 1983. The complaint alleges that the district judge prevented the complainant from appealing the dismissal of his action, first by dismissing some claims without directing the entry of final judgment as to those claims under Federal Rule of Civil Procedure 54(b), and then by dismissing the remainder of the claims without entering a separate judgment under Federal Rule of Civil Procedure 58. According to the complainant, the judge's actions demonstrate prejudice and bias.

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.

An initial review of the district-court record reveals that the district judge dismissed many, but not all, of the complainant's claims in an order dated July 28, 2009. The complainant's appeal from that order was dismissed for want of prosecution. The district judge dismissed the remainder of the complainant's claims in an order dated April 30, 2010. The complainant filed two appeals from that order; the first was dismissed for want of prosecution, and the second was dismissed for lack of jurisdiction.

This complaint is subject to dismissal under Rule 11(c)(1)(B) because it is based entirely on the district judge's rulings—his entry of a partial dismissal order without a Rule 54(b) certification and his entry of a final order of dismissal without a separate judgment. See also 28 U.S.C. § 352(b)(1)(A)(ii). A challenge to the merits of a district

judge's rulings is outside the scope of judicial-misconduct and judicial-disability 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 ruling by a judge. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331, 331-32 (6th Cir. 1988). Moreover, the district judge's actions did not prevent the complainant from appealing the dismissal of any claim.

For these reasons, the complaint will 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: February 24, 2015