

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90094
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M E M O R A N D U M

This complaint of judicial misconduct was filed against the magistrate judge who was assigned to the complainant's bankruptcy appeal. The complaint alleges that the magistrate judge is biased against the complainant and has failed to act on the complainant's motion for recusal. The complaint also suggests that the magistrate judge improperly granted a motion for extension of time that was filed by an opposing party.

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.

An initial review of the district-court record reveals that a bankruptcy appeal was initiated by the complainant on April 14, 2014. Two weeks later, the complainant moved to recuse the magistrate judge. The magistrate judge has not yet ruled on that motion. In May 2014, the appellees moved to dismiss the appeal on the ground that the complainant, a non-attorney, lacked authority to act on behalf of the debtor (a limited liability company). The appellees also sought an indefinite extension of time in which to file their brief, in light of the pending motion. The district judge—*not* the magistrate judge—granted the motion for extension of time. The motion to dismiss remains pending.

To the extent that the complaint is based on the district judge's granting of the motion for extension of time, it is subject to dismissal under Rule 11(c)(1)(C). *See also*

28 U.S.C. § 352(b)(1)(A)(iii). Any suggestion that the district judge's ruling constitutes misconduct on the part of the magistrate judge is frivolous.

To the extent that it alleges delay in ruling on the complainant's motion for recusal, the complaint is subject to dismissal under Rule 11(c)(1)(D). See *also* 28 U.S.C. § 352(b)(1)(A)(iii). An allegation of delay, unaccompanied by allegations of improper motive or habitual delay in a significant number of unrelated cases, does not allege cognizable misconduct. See Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The judicial complaint procedure is not intended to be used to force a ruling on a particular matter that is alleged to have been pending before a judge for an excessive time.

Finally, to the extent that it challenges on substantive grounds the magistrate judge's failure to recuse herself, the complaint is subject to dismissal under Rule 11(c)(1)(B). See *also* 28 U.S.C. § 352(b)(1)(A)(ii). A failure to recuse is merits related. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, the record contains no support for the allegation that the magistrate judge is biased against the complainant, and dismissal of the substantive allegation of bias is thus proper under Rule 11(c)(1)(D) as well.

For these reasons, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii) and Rule 11(c)(1)(B)-(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: December 15, 2014