

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

In re:  
Complaint of Judicial Misconduct

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\*Nos. 06-14-90115/116  
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**M E M O R A N D U M**

This complaint of judicial misconduct was filed by a pro se litigant against the district and magistrate judges to whom her ongoing employment discrimination action is assigned. This is her second complaint against the subject magistrate judge. In her current complaint, she acknowledges and reiterates her previous complaint against the subject magistrate judge, and adds new allegations against both judges. The current complaint challenges numerous rulings by both subject judges, alleges that both have delayed action on her various motions and pleadings, and alleges that the subject magistrate judge acted in a hostile and egregious manner and engaged in an instance of ex parte communication with defendant's counsel.

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 bulk of this complaint is subject to dismissal in part as directly related to the merits of the named judges' decisions in complainant's underlying civil action 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 civil case. See *In re Complaint of Judicial Misconduct*, 858 F.2d 331 (6th Cir. 1988).

That part of the complaint that alleges improper delay is likewise subject to dismissal pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations of delay, absent improper motive or habitual delay, do not constitute misconduct cognizable in the judicial complaint process. See Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. A

complaint of delay in a single case, as here, is additionally excludable as merits related. See *id.*, Commentary on Rule 3. In any event, the complainant has not shown and cannot show unreasonable or persistent delays: the docket sheet in those underlying cases show constant activity, including repetitive responses, replies, and motions for extension of time and reconsideration of judicial orders and judgments. The record thus belies any allegations of delay, unreasonable or otherwise.

That part of the complaint that charges the subject magistrate judge with acting in a hostile and egregious manner focuses on a single event where, at a motions hearing, the magistrate judge allegedly raised his voice when he told the complainant that she had missed a deadline for one or more of her motions. Even assuming this allegation to be true, it does not constitute cognizable conduct under the Rules for Judicial-Conduct and Judicial-Disability Proceedings or the statutory standards. Because a judge raising his or her voice in a single episode does not “transcend[] the expected rough-and-tumble of litigation,” see *Implementation of the Judicial Conduct and Disability Act of 1980*, 239 F.R.D. 116, 241 (2006), this part of the complaint is due to be dismissed under Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant’s allegation of ex parte communications likewise does not demonstrate cognizable misconduct. The complainant bases this allegation on an order by the magistrate judge in which the judge grants the complainant’s motion to clarify a protective order that was previously issued on the defendant’s motion. The complainant argues that because she requested the defendant, and not the judge, to correct the order, the judge could only have done so after ex parte consultation with the defendant. This argument is frivolous, and subject to dismissal as insufficiently supported by credible facts to warrant either a limited inquiry as authorized by 28 U.S.C. § 352(b) or an investigation by a special committee appointed pursuant to 28 U.S.C. § 353. This part of the complaint will therefore be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(C) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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)(A)-(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: January 21, 2015