

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

In re:
Complaint of Judicial Misconduct

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*No. 06-14-90088
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M E M O R A N D U M

This complaint of judicial misconduct was filed by a criminal defendant against the district judge presiding over the complainant's case. The complaint alleges that the district judge had an improper, "conspiratorial" discussion with the prosecutor and defense counsel in the complainant's absence. The complaint also alleges "deliberate delay" and, without elaboration, "addiction."

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 or that a disability exists." Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An initial review of the district-court record reveals that in June 2011 the complainant pleaded guilty to a charge of unlawful possession of a firearm. Sentencing was continued several times while the complainant prepared objections to the presentence report and moved, unsuccessfully, for replacement of appointed counsel. On November 16, 2012, with sentencing not yet having taken place, the district judge conferred with counsel for both parties in the complainant's absence. This conference (an annotated transcript of which was submitted with the complaint) concerned the prosecutor's request to continue the proceeding due to a scheduling conflict. During the conference, the district judge expressed his hope that the parties would "resolve this matter" in a way that would allow the complainant to avoid a mandatory minimum sentence. The district judge also suggested that optimism was not warranted with respect to the complainant's pending motion to withdraw the guilty plea. Several months later, new defense counsel (previous counsel having died) filed an amended

motion to withdraw the guilty plea. That motion was taken under advisement on October 16, 2013, and it remains pending.

This complaint is subject to dismissal under Rule 11(c)(1)(C) & (D). *See also* 28 U.S.C. § 352(b)(1)(A)(iii). The allegation that the district judge conspired with counsel, or otherwise acted improperly at the November 2012 conference, is wholly unsupported by the record. The transcript does not contain evidence sufficient to raise an inference that misconduct occurred. The bare allegation of “addiction” is likewise frivolous. Finally, the 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.

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

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

Date: November 26, 2014