

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Plaintiff,

:

Case No. 3:13-cv-416

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

THE CITY OF MIAMI TOWNSHIP, et al.,

Defendants.

:

ORDER

This case is before the Court on receipt of an April 22, 2014, letter from counsel for Defendants Tim Wilson, Marvin Scothorn, Miami Township, Stephen Gray, Thomas Angel, John Dipietro, and Mathew Scott Moore requesting that the undersigned “consider a voluntary recusal under 28 U.S.C. § 455.

The correspondence is shown as copied by email to all other counsel in the case, so it is in no way inappropriate ex parte correspondence. Nevertheless, S. D. Ohio Civ. R. 7.2(c) reflects the strong preference of the Court that matters other than advice of settlement be presented formally by motion. Particularly in a matter such as this which has garnered public attention, at least to the habeas corpus case, that concern is heightened because of the need for the Court to be transparent to the public.

Accordingly, it is hereby ORDERED, pursuant to S. D. Ohio Civ. R. 7.1.1(d), that any party which wishes to raise an issue of disqualification of the undersigned file a motion to that effect not later than May 1, 2014.

April 22, 2014.

s/ *Michael R. Merz*
United States Magistrate Judge



Patrick Kasson
Direct Dial (614) 232-2418
pkasson@reminger.com

April 22, 2014

VIA EMAIL merz_chambers@ohsd.uscourts.gov

Magistrate Judge Michael R. Merz
United States District Court
Southern District of Ohio
Federal Building, Room 501
200 West Second Street
Dayton, Ohio 45402
Phone: (937) 512-1550

RE: *Roger Dean Gillispie v. Miami Township, et al.*
Case No.: 3:13-cv-416 (U.S. District Court, S.D. Ohio)

Dear Magistrate Judge Merz:

The undersigned counsel for Defendants Tim Wilson, Marvin Scothorn, Miami Township, Stephen Gray, Thomas Angel, John Dipietro, and Mathew Scott Moore are all joining in this correspondence in hopes of informally addressing a preliminary issue in this recently filed civil case.

As you are aware, this civil case has its genesis in your December 15, 2011 Decision and Order Granting a Conditional Writ of Habeas Corpus (*Gillispie v. Timmerman-Cooper*, Case No. 3:09-cv-471, ECF #63) and the later Orders flowing from that decision. It is our understanding that you continue to exercise jurisdiction over the Habeas proceedings.

As you might imagine, our clients respectfully disagree with the decisions you have rendered in the Habeas proceedings. Those conclusions will be hotly contested in the civil action.

All counsel in this case have the deepest respect for you as a jurist. We sincerely do not mean, through this letter, to offend you. We would be remiss, however, if we did not raise the issue of a recusal under 28 U.S.C. § 455.

Our clients are concerned that your involvement in the Habeas proceedings and the decisions you have made may affect your impartiality in the civil action. Rather than file



something formal, we thought it would be best to approach this with you informally, first, through this correspondence. Our clients request that you consider a voluntary recusal under 28 U.S.C. § 455.

If you would like, I would be glad to set up a phone conference with all counsel to further discuss this.

Thank you for your consideration of this matter.

Very truly yours,

s/ Patrick Kasson

Patrick Kasson (0055570)

Tyler Tarney (0089082)

REMINGER CO., LPA

65 E. State Street, 4th Floor

Columbus, OH 43215

(614) 228-1311

Email: pkasson@reminger.com

ttarney@reminger.com

*Counsel for Defendants Tim Wilson and Marvin
Scothorn*

s/ Lawrence E. Barbieri

Lawrence E. Barbieri (0027106)

SCHROEDER, MUNDRELL, BARBIERE & POWERS

5300 Socialville-Foster Road, #200

Mason, OH 45040

(513) 583-4200

Email: lbarbieri@smbplaw.com

*Counsel for Defendant Stephen Gray, Thomas
Angel and John Dipietro*

s/ Edward J. Dowd

Edward J. Dowd (0018681)

Dawn M. Frick (0069068)

Joshua R. Schierloh (0078325)

SURDYK, DOWD & TURNER CO., LPA

1 Prestige Place, #700

Miamisburg, OH 45343

(937) 222-2333

Email: edowd@sdtlawyers.com

dfrick@sdtlawyers.com

jschierloh@sdtlawyers.com

Counsel for Defendant City of Miami Township

s/ Todd M. Raskin
Todd M. Raskin (0003625)
Cara Michelle Wright (0084583)
MAZANEC, RASKIN & RYDER Co., LPA
100 Franklins Row
34305 Solon Road
Cleveland, OH 44139
(440) 248-7906
Email: traskin@mrrklaw.com
cwright@mrrklaw.com
Counsel for Defendant Matthew Scott Moore

cc: David Owens (via email: david@loevy.com)
Michael Kanovitz (via email: mike@loevy.com)
Michele Berry (via email: mberry@mberrylaw.com)
Laura Mariani (via email: marianil@mcoho.org)
Dwight Dean Brannon (via email: dbrannon@branlaw.com)
Joel Sechler (via email: sechler@carpenterlipps.com)