

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

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-15-90095
*
*
*
*

M E M O R A N D U M

This complaint of judicial misconduct was filed by a federal prisoner against the district judge who denied his motion to vacate sentence pursuant to 28 U.S.C. § 2255. The complaint charges that the subject judge perjured himself in an order denying the complainant's motions for an extension of time and for additional transcripts by mischaracterizing events that occurred at the trial. The underlying dispute involved a juror who accidentally viewed a police report that was not admitted into evidence. The subject judge, according to a transcript that he quoted in the order, handled the matter by questioning the juror in chambers, after which he determined that no other jurors had seen the report and that the juror had forgotten what she had read. The complainant now points to a minute entry from the docket sheet for the actual trial, which he argues shows that the juror was actually questioned in the open courtroom but outside the presence of the other jurors. He claims that the conflict between the trial minutes and the actual transcript that the subject judge quoted in his order shows that the subject judge committed perjury in his order.

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.

Complainant has not shown that the questioned statement in the subject judge's order conflicted with the minute entry from the trial, much less shown that the judge perjured himself. The conflict he identifies is apparently limited to the location at which the questioning of the juror took place. The relevant part of the minute entry to which

the complainant points states: “court questioned juror individually & then discussed w/ counsel; jurors brought in to [sic] open court & instructed not to consider.” That part of the transcript that the subject judge quoted in his order indicates that the judge questioned the juror in chambers, then returned to open court, called in the whole panel, and instructed them to ignore the document and anything related to it. The minute entry does not say that the juror was questioned in open court, as opposed to chambers, and thus does not conflict with anything in the order. Because the complainant’s allegation of perjury thus lacks any factual foundation, the complaint must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(B) and Rule 11(c)(1)(D) 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)(B) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Date: January 20, 2016