

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

In re:  
Complaint of Judicial Misconduct

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\*No. 06-19-90007  
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**MEMORANDUM AND ORDER**

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complainant alleges that the subject judge “committ[ed] ex parte communication” (capitalization and punctuation omitted) with the jury foreperson during deliberations in the underlying criminal trial and then assisted the court reporter in concealing the misconduct by omitting it from the transcript. In a supplement to his complaint, he attaches a 2011 letter from the subject judge explaining that because the communication from the jury was in form of a note, which the judge returned to the foreman, there were no proceedings in open court to be transcribed. The note and the subject judge’s response thereto appears in the record.

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 actual process of communication between the jury foreperson and the subject judge was through notes: the foreperson sent a note asking about certain trial testimony, and the subject judge replied that the jury should rely on its collective memory. The notes appear in the record of his trial, and the complainant has unsuccessfully litigated the issue in state and federal post conviction proceedings for years. The judicial complaint process may not be used to challenge the merits of judicial rulings made in underlying 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. This part of the complaint is therefore subject to dismissal as directly related to the merits of the named judge’s decisions in the underlying proceedings, 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.

The complainant's argument regarding the transcripts are belied by the record, which shows that the jury foreman sent the judge a note, and the judge replied in kind. There was nothing to be transcribed, and the transaction between jury foreman and judge is accurately reflected in the record. Those allegations are therefore dismissed as lacking sufficient evidence to raise an inference that misconduct occurred or a disability exists, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(E) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

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

Date: September 24, 2019