

FILED

February 5, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90037

MEMORANDUM

Complainant A and Complainant B—defendants in separate criminal proceedings who describe themselves as “two African American pro se litigants” —have filed a complaint alleging misconduct by the subject United States District Judge.¹

The complainants allege that the subject judge improperly denied their motions “identif[ying] multiple Jencks Act violations committed by the Government,” thereby demonstrating “complete disregard for stare decisis of our Fifth Circuit, Supreme Court jurisprudence, Acts of Congress, and the integrity of the federal judiciary.” They further protest that in denying Complainant A’s motion(s), the judge “falsely asserted that the Government had complied with the Jencks Act” and “repetitively assert[ed] that [Complainant A] can bring these matters up on direct appeal . . . [e]ven though the evidence became known while [the district court] still has subject matter over the case before sentencing.”

Complainants also assert that the judge displayed “deep-seated animosity” in denying Complainant A’s recusal motion. In addition, complainants contend the judge denied Complainant A’s motion to continue

¹ A review of the underlying dockets indicates that Complainant A was represented by counsel at trial but represented himself during the sentencing phase, and Complainant B, who was initially represented by counsel, has elected to represent himself at trial.

the scheduled in-person sentencing hearing due to COVID-19 because the judge “wants so desperately to have [Complainant A] sentenced and [his] case closed.”

Complainants insist that they are not challenging the merits of these adverse rulings, rather they are alleging the rulings demonstrate that the judge is engaged in “systematic racial oppression” by “actively targeting two African American pro se litigants . . . making sure that neither [of us] have any evidentiary hearings in his courtroom.” Without providing any evidence in support of the claim, they state that the judge “has never denied a Caucasian individual or attorney the opportunity to address the courts on matters such as serious violations of the Jencks Act.”

Complainants conclude that the judge’s rulings are “fueled by racial discrimination,” “complete dislike for pro se litigants,” and “participat[ion] in Judicial Anarchy.”

To the extent that these allegations relate directly to the merits of the chief judge’s decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of racial discrimination and bias against pro se criminal defendants are insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainants state that Complainant A made “numerous” requests for a copy of his recusal motion to “file a writ of mandamus in regards to it,” but the judge “won’t release” a copy because he “doesn’t want his actions to get out.”

It is the responsibility of the Clerk, not the presiding judge, to respond to a party’s request for a copy of a motion, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent, if any, that the allegation might be construed as implying that the judge instructed the Clerk not to respond to the requests, such a conclusory

assertion is insufficient to support a finding of judicial misconduct and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

February 4, 2021