

FILED

January 10, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90019

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States District Judge in complainant's 28 U.S.C. § 2254 proceeding and in his pending 42 U.S.C. § 1983 action.

Complainant alleges that the judge has deprived him of due process, violated his constitutional rights, and engaged in "racketeering and/or extortion" by:

- "knowingly and intentionally permitt[ing] the conventional notions of finality of litigation"—i.e., ruling that complainant's § 2254 petition was time-barred—to deny complainant "the fullest opportunity for plenary federal judicial review," and denying complainant's motion for relief from judgment;
- "knowingly and intentionally disregarding evidence ... [of] numerous errors of constitutional magnitude" in complainant's criminal trial "to free and protect" the state judge, prosecutor, and court-appointed counsel;
- denying habeas relief, thereby "forcing" complainant to file the § 1983 action, resulting in him having to pay filing fees;
- "knowingly and intentionally imped[ing] the [§ 1983] action" by unduly delaying screening of the complaint under 28 U.S.C. § 1915A(a), and denying complainant's motion to expedite

screening, thereby depriving “a disabled veteran” of his right to the just, speedy and inexpensive resolution of his civil dispute;

- “creat[ing] or enabl[ing] the creation of extortionate extension of credit” by ordering the collection of filing fees in the § 1983 proceeding “while hindering, delaying and defrauding [complainant’s] access to the Courts”; and,
- “den[ying] all other relief” sought by complainant pending screening of his § 1983 complaint.

Complainant submits that the judge’s adverse rulings in both proceedings, and the undue delay in the § 1983 action, constitute evidence of: “constructive (legal) fraud,” “fraud on the courts,” “Organized Crime - Racketeering,” judicial activism (e.g., “refus[ing] to abide by his Oath of Office,” ignoring “Super Precedent,” placing “a cause of action in abeyance to deprive [me] of relief”), discrimination against a disabled veteran, and personal bias against a person accused of child-sex crimes which “falls outside of the Judeo-Christian beliefs or other doctrines of [the judge].” Complainant appears to further assert that the judge should have recused himself sua sponte for “bias, prejudice or conflict of interest” in one or both proceedings. He concludes that the judge has “mental or physical disabilities.”

Complainant provides no evidence of the judge’s discriminatory intent or disability other than the judge’s failure to rule in his favor.

To the extent that these allegations relate directly to the merits of the judge’s adverse rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of discrimination, personal animus, and mental or physical disability appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28

U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

To the extent that the allegation of undue delay relates directly to the merits of the judge’s denial of complainant’s motion to expedite screening, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, complainant does not allege a pattern of habitual delay, and his assertion that the delay had an improper motive because the judge was biased against a person accused of child-sex crimes is wholly unsupported, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

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

January 5, 2022