

FILED

May 20, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90051

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States District Judge in a criminal proceeding.

Complainant alleges that the judge engaged in *ex parte* communication with counsel for the government, to wit; “[The subject judge] engaged in conversation related to substantive counts, substantive evidence and other key issues,” and in doing so, “abandoned [his] role as a[n] independent, disinterested, impartial party.” Complainant avers that this gave the appearance of “conspiring with the prosecution” and of “structuring a trial in favor of the government at the cost of [his] constitutional rights.” Specifically, complainant asserts that the judge “was fully aware that defense counsel wore two (2) hearing aids to assist with his hearing,” however, during the proceedings, “made no effort to assure defense counsel was a part of the conversation...”. The trial transcript, however, reflects that complainant’s counsel in fact participated in the conversation at issue.

Complainant further alleges that the subject judge was “influenced beyond the actual evidence presented in the case” and had a “preconceived notion of [his] guilt.” He claims that the judge “abandoned his role as judge and adopted the role of prosecutor,” thus demonstrating bias in favor of the

government. A review of the trial transcript, however, reveals insufficient evidence to support this statement.

Complainant also alleges, without support, that the judge demonstrated racial bias in denying a motion to recuse.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that the allegations are contradicted by the record, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, such conclusory assertions of bias 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.”

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.

/s/ Priscilla Richman

Priscilla Richman

Chief United States Circuit Judge

May 18, 2022

FILED

July 13, 2022

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-22-90051

Petition for Review by [REDACTED]
of the Final Order Filed May 20, 2022,
dismissing the Judicial Misconduct Complaint against
[REDACTED]
Under the Judicial Improvements Act of 2002.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Priscilla Richman, filed May 20, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

July 6, 2022
Date

Jennifer W. Elrod
Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit