

OCT 18 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERKIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Numbers: 05-17-90098 and 05-17-90099

M E M O R A N D U M

Complainant, a state prisoner, alleges that the subject United States District Judge not only adopted a magistrate judge's erroneous recommendation to deny complainant's petition for a writ of habeas corpus, but did so without first holding a *de novo* hearing regarding complainant's meritorious objections. Complainant further asserts that the subject United States Circuit Judge denied his application for a certificate of appealability "at the behest of" the district judge. In support of this assertion, complainant claims that an "employee of the Central Intelligence Agency, who is a friend of the attorney providing consultation to [me]," recorded a conversation between the two judges. He asserts that the district judge "can be heard repeating the words, "He wrote a book" in reference to [my] having written a letter to him expressing various endeavors." Complainant contends that following this conversation, the circuit judge "then ordered his law clerk to draft a "boiler plate" denial of [my] ... meritorious claims."

Complainant has provided no evidence in support of his outlandish claims. To the extent, if any, that the complaint relates directly to the merits of the circuit judge's decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the complaint is facially incredible and entirely lacking in indicia of reliability, and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

The district judge's retirement is an intervening event that makes action on the allegations against him unnecessary, and that aspect of the complaint is therefore concluded pursuant to 28 U.S.C. § 352(b)(2).¹

¹ The undersigned notes that had the district judge not retired, the allegations against him also would have been subject to dismissal as merits-related and frivolous under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

Complainant's filing of wholly unsupported and inherently implausible allegations under penalty of perjury constitutes an abuse of the complaint process. Complainant's right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why his right to file further complaints should not be so limited.

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.



Carl E. Stewart

Chief Judge

October 13, 2017