

FILED

January 10, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90155

MEMORANDUM

Complainant, a federal prisoner, has filed a complaint alleging misconduct by the subject United States District Judge in complainant's 2012 and 2013 criminal proceedings.

Complainant claims that in 2012 and 2013, he sent numerous letters directly to the judge's chambers, asking her to investigate and act on an asserted conflict of interest involving the Assistant United States Attorney prosecuting the criminal cases, and on his complaints against his retained counsel. He complains that the judge failed to docket or otherwise act on these letters, and that she "purposefully and deliberately" failed to file them into the court record.

FED. R. CIV. P. 5(d)(2)(B) provides: "A paper not filed electronically is filed by delivering it: ... (B) to a judge *who agrees to accept it for filing*, and who must then note the filing date on the paper and promptly send it to the clerk" (emphasis added). In *Raines v. City of Starkville*, 986 F.2d 1418 (5th Cir. 1993) (No. 91-7082, unpublished), a panel of this Court cited with approval the Second Circuit's statement that documents delivered to a judge are not automatically filed, but are "proper only when the Court's discretion has been invoked by one of the parties for good cause." *International Business Machines v. Edelstein*, 526 F.2d 37, 46 (2d Cir. 1975).

The judge had discretion whether to accept directly-delivered papers for filing. Thus, even accepting complainant's assertion that he mailed such

documents to the judge, her assumed decision not to file them was an exercise of her discretion.

The complaint relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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

December 28, 2021