

**FILED**

January 10, 2022

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-21-90157

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## MEMORANDUM

Complainant, a state prisoner, alleges that in denying complainant's petitions for habeas relief, the subject United States District Judge "brought up my background of a sexual assault of a child that occurred some 25 years ago, has nothing to do with if I'm granted relief or not." Complainant urges that this reference violated Rule 4(a)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings which provides that "[c]ognizable misconduct includes: . . . (D) engaging in partisan political activity or making inappropriately partisan statements."

A review of the judge's opinion shows that he referenced complainant's prior conviction as part of the recitation of the state charges of which complainant was convicted; the state indictment alleged the sexual assault conviction as a basis for enhancing complainant's sentence.

Because complainant's prior conviction was relevant to the conviction and sentence that complainant sought habeas relief against, it was not improper for the judge to mention it. The complaint is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.



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Priscilla R. Owen  
Chief United States Circuit Judge

January 4, 2022