

FILED

March 15, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90124

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States District Judge in a 42 U.S.C. § 1983 proceeding.

Complainant complains that the judge: denied his request to substitute counsel; “literally tortur[ed]” complainant by ordering prison personnel to transport him from the prison to the courthouse, “a 4½ hour trip for three days straight ... to wear me out, so that I couldn’t function effectively”; and, “made an inappropriate comment to the jury after I lost my case—almost as a celebration of his tone, he stated, “You know ... this [is] what makes this a GREAAAT Count[r]y.” But would he have made that same comment IF I [had] won?”

To the extent that the 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). Complainant’s allegation that the judge’s order to transport him to and from [the prison to the courthouse] to attend trial each day “was to wear me out, so that I couldn’t function effectively” appears entirely derivative of the merits-related charges, but to the extent that the assertion is separate, it 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.”

In other respects, the allegation that the judge addressed the jurors in a celebratory tone after accepting their verdict in favor of the defendant is belied by the audio-recording of the three-minute hearing which shows that there was nothing discernibly “celebratory” in the judge’s tone of voice in extolling the virtues of the jury trial system and expressing his sincere thanks to the jurors for their service. This aspect of the complaint is not borne out by the evidence complainant cites and is therefore also 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

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