

**FILED**

January 9, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Numbers: 05-24-90017 and 05-24-90018

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## MEMORANDUM

Complainant, a federal prisoner, has filed a complaint alleging misconduct by the subject United States District Judge A in his criminal proceeding, and by United States District Judge B in response to complainant's letters regarding his concerns about Judge A's conduct.

### *Allegations against Judge A*

Complainant alleges that Judge A treated him in a "demonstrably egregious and hostile manner" by engaging in "abusive and harassing behavior." He further alleges that the judge "intentionally discriminated" against his company "on the basis of disability." For example:

- Judge A was "100% aware" of FBI misconduct and "[was] covering up multiple crimes all being perpetrated right in front of his eyes."
- Despite knowing that the company "ha[d] never been charged with a crime," the judge allowed the "FBI & Prosecution cartablanco [sic] to fabricate summary charges and false warrants with zero due process for a corporation's banking privacy," and subsequently allowed "Probation unfettered access to corporate banking [records]."
- He did not allow either the company "to speak to defend itself" or complainant, the president of the company, to speak on its behalf, which constituted "intentional discrimination" against the

company “based on disability of said corporation to function as a person and the discrimination is not giving said person due process.”

- Judge A engaged in ex parte communication with the company’s attorney “in front of the jury” and “testif[ied] for the Prosecution . . . insinuat[ing] that [the company’s] attorney may lie, conditioning said Jury.”
- The judge failed to convene a pre-trial *Faretta* hearing.
- He “suppress[ed] exculpatory material evidence” which “leads [me] to believe that [he] is either incompetent, mentally unstable, working with the FBI, or perhaps operating under duress, (pressured by the FBI) . . . [and] is not familiar with either corporate or Delaware law(s).”
- Judge A permitted defense counsel to violate complainant’s Sixth Amendment rights by refusing to let him testify at trial.
- The judge “refuse[d] to grant [complainant] any access to discovery” while he was representing himself, erroneously “claiming that criminal defendants can’t have access to general discovery.”
- “[F]or months after [the] trial,” the judge was “ignoring me and all of the motions I was sending in.”
- Judge A engaged in “corruption” by “refus[ing] to look at any of my PSR rebuttal evidence where I [proved] that my court-appointed Public Defender is/was not licensed anywhere” and, “cit[ing] that *federalism* covers [the attorney’s] conduct in his court,” improperly denied complainant’s “motion for acquittal due to ineffective assistance of counsel.”

Complainant recounts that, post-trial, he sent five letters to Judge B reporting his concerns about Judge A’s conduct and other aspects of the case.

He alleges that after Judge B forwarded the correspondence to the Division, Judge A subjected him to “extensive retaliation” in “many forms.” Complainant provides the following examples in support of this claim:

- Judge A intentionally and prejudicially “continue[d] to casually refer to [complainant] simply as criminal defendant . . . instead of as a pro se litigant” when complainant was representing himself.
- The judge had the district court clerk return the letters to complainant, “(opened), in a manilla envelope,” because he “wanted to rub it in my face that he had accessed all of this material.”

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). In other respects, any assertions of conspiracy, retaliation, ex parte communication, or “mental instability,” 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.”

Complainant also claims that when Attorney X visited him in prison in July 2023, Attorney X expressed his “willingness to testify to the 5<sup>th</sup> Cir. about [Judge A’s] behavior and about the threats he has received from said judge verbally as well as in email form.” Complainant claims he saw one such email in which the judge “is telling [Attorney X] that “he needs to get his client in-line immediately.”” He further claims that there are other emails in which the judge “threatened [the attorney’s] Bar card . . . if he doesn’t break protocols and attempt to reel me in ASAP!”

A limited inquiry was conducted under 28 U.S.C. § 352(a) to verify these claims, however Attorney X did not respond to multiple voicemail messages left over several weeks. This aspect of the complaint is therefore

subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “incapable of being established through investigation.”

In addition, complainant submits that Judge A should have recused himself sua sponte for conflict of interest because “it appears that” he has a close friendship with the Assistant United States Attorney prosecuting the case. In support of this claim, complainant recounts that prior to the commencement of the sentencing hearing, he heard the AUSA bragging to the father of a prosecution witness about “what his FRIEND is about to do to the first of the 2 culprits in just a few minutes, then stating we can celebrate this all together later.”

Even if the AUSA made the statement complainant attributes to him, it does not constitute evidence of a close friendship with Judge A, and the allegation 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.”

*Allegations against Judge B*

Complainant has provided copies of the five letters he sent to Judge B voicing numerous “concerns” including:

- claiming he was innocent and had been “kidnapped by the FBI, for real”;
- alleging prosecutorial misconduct and ineffective assistance of counsel;
- asserting that Judge A erroneously held that the court-appointed Public Defender was authorized to appear before the district court;
- complaining that Judge A was retaliating against him by “not answering my motions right now, and I’m not receiving any evidence from him ... perhaps due to some of my recent motions”;

- asking Judge B to explain why Judge A was or was not making certain rulings; and,
- requesting “confidentiality untill [sic] we might speak (if that is at all possible), before you do anything at all with what you’re about to read please.”

Complainant states that he sent these “confidential report[s]” to “giv[e] [Judge B] a background to potentially look into [my criminal case].” He protests that Judge B “betra[yed] [his] trust” by sending the correspondence to the court where his case was pending, and that this “hanus [sic] behavior” was “the catalist [sic]” for Judge A’s (allegedly) retaliatory conduct towards him. He appears to further assert that Judge B should have reported Judge A’s misconduct to “the Fifth Circuit” (presumably for consideration under 28 U.S.C. §§ 351-364).

To the extent that complainant’s letters protested his innocence, alleged prosecutorial misconduct and ineffective assistance of counsel, and sought clarification of procedural rulings and orders in a matter pending before Judge B, it was entirely proper for Judge A to transmit the correspondence to that court, and the allegation of impropriety is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Regarding any assertion that Judge B should have instead (or also) transmitted complainant’s claims about Judge B’s conduct to the Fifth Circuit for consideration pursuant to 28 U.S.C. §§ 351-364, Canon 3B(5) of the Code of Conduct for United States Judges provides that “[a] judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge’s conduct contravened this Code[.]” To the extent, if any, that Canon 3B(5) might be construed as requiring Judge B to report the misconduct alleged by complainant, this aspect of the complaint relates directly to the merits of the judge’s assessment of the “reliability” of those allegations, 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.

A handwritten signature in cursive script that reads "Priscilla Richman".

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Priscilla Richman

Chief United States Circuit Judge

January 6, 2024