

**FILED**

January 19, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-24-90023

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## MEMORANDUM

Complainant, a federal prisoner, alleges misconduct by the subject United States District Judge in his criminal and post-conviction proceedings. He also claims that the judge is suffering from a disability.

Without distinguishing between the criminal and post-conviction proceedings, complainant alleges that the judge:

- “purposely does not follow the plain language of both law and federal court decisions”;
- denied him due process by “blatantly and illegally disregard[ing] the issues” he raised in his defense and/or in his § 2255 motions;
- “twisted and distorted” his meritorious arguments “to hide the truth” about “law enforcement’s” role in posting “bait videos” of child pornography on the internet to “hook thus addict innocent individuals into their depraved and perverted world” and/or purposely withholding technology that would eliminate child pornography from the internet or “tag a video illegal”; and,
- erroneously held that “my appeal was not taken in good faith.”

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 assertion of improper motive appears entirely derivative of the merits-related charges, but to the extent the

allegation 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.”

Complainant further alleges that the judge tampered with an unspecified transcript, deleting her statement that “went something as such: “I will no[t] accept nullification in my court.”” He claims that the judge “said this because my attorney and I had a discussion along the lines of where I stated “I only need one juror to believe me” for I wanted a jury trial. My attorney didn’t. I can only suppose my attorney passed on this information to [the judge]. In essence, my attorney and [the judge] conspired to deny me Justice, Due Process, Rule of Law circumvented.”

Based on a review of the five transcripts in the record, it appears that complainant is referring to a discussion between the judge and defense counsel during a pretrial conference. Complainant had confirmed that he wanted to abide by the plea agreement, not go to trial, but he then submitted that he was “a hundred percent innocent” and that the law against viewing child pornography—as opposed to producing it—was unjust. Defense counsel explained that complainant believed that the law was wrong and, if there were a trial, he would ask defense counsel to present a nullification defense to the jury. The judge stated that she would not allow jury nullification. Complainant again confirmed that he did not want to proceed to trial.

A comparison of the transcript and the audio-recording demonstrates that the transcript is accurate, and the claim that the judge tampered with the record of the pretrial conference is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant appears to allege that the discussion of jury nullification only occurred because defense counsel had engaged in improper ex parte communication with the judge prior to the hearing to “pass on” that complainant “wanted a jury trial,” that claim is not supported

by the record. There is ample evidence that the judge’s inquiries about whether complainant wanted to proceed to trial were based on his statements defending his actions and questioning the law, and he was afforded several opportunities to consult with counsel before confirming that he did not want a trial.

The assertion that the judge and defense counsel conspired to deny complainant’s due process rights and circumvent the Rule of Law by engaging in ex parte communication 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.”

Finally, complainant submits that the judge’s decisions and conduct throughout the criminal and post-conviction proceedings, including her purported inability to “comprehend” that the transcripts show that the Government and the “court itself ha[ve] declared [me] innocent,” demonstrate that she is suffering from a disability, i.e., she is “a sociopath” whose “corrupt mind [is] not capable of dispensing justice.”

This conclusory assertion is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference” that the judge is suffering from a disability.

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 Richman  
Priscilla Richman  
Chief United States Circuit Judge

January 9, 2024