

FILED

February 5, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-21-90040 and 05-21-90041

MEMORANDUM

Complainant A and Complainant B—defendants in separate criminal proceedings who describe themselves as “two African American pro se litigants” —have filed a complaint alleging misconduct by the subject United States District Judge and the subject United States Magistrate Judge.¹

Complainants allege that the magistrate judge conspired with Assistant United States Attorneys to suppress and/or withhold exonerative evidence in both proceedings and, in Complainant A’s case, also permitted prosecution witnesses to give “perjured trial testimony.” They further complain that in denying their recusal motions, the judge “subor[n]ed” the magistrate judge’s “subterfuge” and “malfeasance in office.”

Complainants also allege that the magistrate judge’s and the judge’s adverse rulings were improperly motivated by “antagonism towards pro se litigants” and “racially-fueled judicial oppression” intended to “secure [the] convictions . . . of the two African American individuals of color accused to be criminals” who are exercising “their Sixth Amendment Right to self-representation.” They further submit that the judge “disregard[ed] stare

¹ A review of the underlying dockets indicates that Complainant A was represented by counsel at trial but represented himself during the sentencing phase, and Complainant B, who was initially represented by counsel, has elected to represent himself at trial.

decisis, the fairness requirement of the law, and his oath of office, in order to punish [us] for actively exposing the illegal and racially oppressive methods utilized to obtain convictions in his courtroom.”

In addition, without providing any evidence in support of the assertion, they claim that the magistrate judge and the judge “have never engaged in the [same] level[s] of subterfuge . . . in any cases involving individuals not of color.”

To the extent that these allegations relate directly to the merits of the chief judge’s and magistrate judge’s decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of conspiracy, racial discrimination, and bias against pro se criminal defendants are insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

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

February 4, 2021