

FILED

May 12, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90102

MEMORANDUM

Complainant, a federal prisoner, alleges misconduct by the subject United States District Judge in two post-conviction proceedings.

Complainant alleges the judge engaged in improper ex parte communication with the United States Attorney's Office in Case 1. In support of this claim, complainant recounts that the judge denied his Rule 60(b) and Rule 59(e) motions without directing the United States Attorney's Office to file responses and, in complainant's appeal from those denials, the Assistant United States Attorney notified the Fifth Circuit that the United States Attorney's Office would not participate because it had not filed responses to the motions. Complainant contends that the judge must have engaged in "secret ex parte communication . . . ask[ing] [the] AUSA to not participate in [my] case. [These] actions ha[ve] me stuck without any way to remedy [my] case and both [the judge] and the AUSA know this and have plan[ned] it so [I] stay stuck in prison."

Complainant further alleges that the judge engaged in improper ex parte communication with the United States Attorney's Office and the United States Probation Office in Case 2. In support of this claim, he recounts that the judge entered an order holding that complainant's objections to the Presentence Investigation Report "[were] without merit . . . [and] that neither the government nor the probation office need[ed] to file a response to the objections." Even though the order is entered on the docket, complainant

submits that the judge communicated “secretly” with the United States Probation Office and the United States Attorney’s Office, “ask[ing] them to continue to keep the false and misleading p. 10 of [my] Presentence Investigation Report so that [I] will always be determined to be a career offender when [I am] not.”

Complainant further complains that the judge’s denials of his Rule 59(e) motion in Case 1 and his motion for compassionate release in Case 2 were erroneous and constitute evidence of demonstrably egregious and hostile treatment of a pro se litigant.

Complainant concludes that the judge is “emotionally, mentally, and abnormally obsess[ed] with keeping [me] in prison until [sic] he is willing to break the rule of law, rule[s] of court, and conspire with others.”

To the extent that these allegations relate directly to merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of ex parte communication, conspiracy, and personal animus appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.



Priscilla R. Owen
Chief United States Circuit Judge

May 6, 2021