

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
OCT 17 2017
FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Docket Number: 05-17-90070

MEMORANDUM

Complainant, a state prisoner, complains that the subject United States District Judge “was not fully competent due to her mental or physical disability,” and that she denied his habeas corpus petition “during the ‘peak’ of her present disability.” Complainant’s application for a certificate of appealability of that denial is pending, and he asks that the Fifth Circuit “consider this complaint towards reviewing my Certificate of Appealability.”

On July 31, 2017, the subject judge retired for disability under 28 U.S.C. § 372(a). On August 23, 2017, the Judicial Council of the Fifth Circuit found that a previous complaint asserting the subject judge’s disability should be concluded because intervening events, namely, the judge’s retirement for disability, had made the proceeding unnecessary, pursuant to 28 U.S.C. § 354(a)(1)(C) and Rule 20(b)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Similarly, this complaint should be concluded under 28 U.S.C. § 352(b)(2) and Rule 11(a)(3), because intervening events have made action on the complaint no longer necessary.

To the extent complainant seeks to assert the judge’s disability as a ground in his pending appeal, his complaint relates directly to the merits of the case, and is 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 concluding and dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart
Chief Judge

October 11, 2017