

FILED

June 9, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90071

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge in a 28 U.S.C. § 2254 proceeding.

Several weeks after the judge entered an order denying complainant's § 2254 petition, the district court clerk erroneously docketed a "Petition for a Protective Order and Extraordinary Relief" captioned for filing in complainant's pending 42 U.S.C. § 1983 action. Neither the State-Respondent (which filed a response) nor the court noticed the docketing error, and the judge dismissed the petition. Two weeks later, complainant notified the clerk of the error, and the clerk then docketed the petition in the correct case.

Complainant alleges that by ruling on the erroneously docketed petition, the judge intentionally and maliciously denied him due process. Alternatively, if the judge merely failed to notice the docketing error, complainant proposes that it is "questionable" whether the judge "even looked over the evidence" before denying his § 2254 petition. He further complains that the judge "failed to show any remorse" or "make a correction" in response to complainant's letter notifying the clerk of the docketing error.

To the extent that complainant alleges that the judge should not have ruled on the erroneously docketed petition, failed to "make a correction" after the error was brought to the clerk's attention, and denied complainant's § 2254 petition, the allegations relate directly to the merits of decisions or procedural rulings and are therefore subject to dismissal under 28 U.S.C.

§ 352(b)(1)(A)(ii). In other respects, any assertion that the judge intentionally and maliciously entered an adverse ruling on the petition, 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.”

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.

This is complainant’s fourth merits-related and/or conclusory complaint, and he has been warned previously against filing a further merits-related, conclusory, frivolous, or repetitive complaint. Complainant’s right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why his right to file further complaints should not be so limited.

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

June 7, 2022