

**FILED**

March 6, 2023

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-22-90102

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## MEMORANDUM

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

Complainant alleges that during a final revocation hearing the 2009 criminal proceeding:

[The judge] demonstrated her hatred and bias of [sic] me by threatening me on the record. She was upset that my supervised violation grade had been reduced from a “B class” to a “C class” violation. I went from facing 2 years, to 7-9 months, which upset [the judge]. She told me that it didn’t matter because I would be back ... and she didn’t care what district I was in, that she would have me brought in front of her so that she could give me some time I wasn’t thinking about, because she was tired of me and my family’s enterprise of breaking the law.

A review of the audio-recording of the hearing indicates that nothing in the judge’s tone or demeanor suggested she was “upset” about the reduced classification of complainant’s supervised release violation, and she did not make the “threatening” statement complainant attributes to her.

This aspect of the complaint is not borne out by the evidence complainant cites 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 also alleges that during a sentencing hearing in the 2012 criminal proceeding:

[The judge] asked me with a smirk, “[D]o you remember what I told you I was going to do the last time you were in front of me?” She then carried out her threat and promise, by handing down an unjust sentence ... which was not consistent with other sentences handed to similar defendants in the [district] and abroad. My sentence reflects [the judge’s] hatred and bias toward me.

A review of the audio-recording and transcript of the hearing indicates that the judge did not make the statement attributed to her. The judge did, however, express exasperation that complainant did not take seriously the sentence she imposed in his prior criminal case, committed further crimes while on supervised release, and was now trying to convince the judge to give him a lesser sentence.

To the extent that complainant is complaining about the judge’s remarks during the sentencing hearing, the Supreme Court of the United States has held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge’s task.” *Liteky v. United States*, 510 U.S. 540, 550-551 (1994). This aspect of the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that the complaint relates directly to the merits of decisions or procedural rulings, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of bias and

personal animus in both proceedings appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.

An order dismissing the complaint is entered simultaneously herewith.

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

November 10, 2022