

FILED

March 29, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-23-90007 through 05-23-90009

MEMORANDUM

Complainant, a pro se litigant and former federal prisoner, has filed a complaint alleging misconduct by United States District Judge A, United States District Judge B, and by the subject United States Circuit Judge. Complainant’s allegations are embedded within a convoluted narrative regarding decades of state and federal criminal proceedings, and federal post-conviction proceedings and appeals. In response to two requests to provide a clear and concise statement of her claims against each subject judge, complainant submitted similarly convoluted supplemental statements and hundreds of pages of exhibits.

Case 1

Complainant alleges that in retaliation for her filing an interlocutory appeal and a misconduct complaint against Judge A, her 28 U.S.C. § 1655 action “was ordered dismissed” on November 30, 2009, and she was arrested on state charges.

The docket records that in an order entered on November 10, 2009, Judge A transferred complainant’s § 1655 action to another judge—who is not named as a subject of the instant complaint—who subsequently dismissed her claims on res judicata grounds. It appears that complainant is alleging that Judge A improperly influenced the presiding judge to dismiss her § 1655 claims and was somehow involved with her arrest.

Such conclusory assertions 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.”

Case 2

In May 2015, complainant mailed a document captioned “Petition for a Writ of Coram Nobis” to the district court clerk’s office where it was docketed as a new case. Judge A denied the petition in an ordered entered in July 2015.

Complainant protests that the document was a “petition for a writ of certiorari” addressed to the United States Supreme Court seeking review of a Fifth Circuit decision affirming Judge A’s denial of a petition for a writ of coram nobis she filed in 2014. She accuses Judge A of “stealing” the petition.

The allegation relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under U.S.C. § 352(b)(1)(A)(ii).

Case 3

In her initial complaint, complainant alleges that “December 12, 2016 after the Presidential Election, [Judge B] wantonly falsified [my 1997] federal violations from “felon in possession of a firearm under 922(g)””; “false statement in acquisition of a firearm under 922(a)(6)””; to, “unlawful transport of firearms”.” Because complainant did not specify the case in which this alleged misconduct occurred, the Clerk of Court asked her to clarify this claim. In her response, complainant appears to amend the allegation, stating: “If [Judge A] was still the Senior Judge, then [Judge B] knew of [the falsification], as they were referenced in [a petition for habeas relief complainant filed in 2020].

Regardless, whether the allegation is aimed at Judge B, Judge A, or both, it relates directly to the merits of decisions or procedural rulings and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Appeal 1

Complainant complains that “instead of helping secure [my] release,” the subject circuit judge denied as successive her petition for a certificate of appealability in “callous disregard for [a] female prisoner’s life.” She submits that the circuit judge “is either corrupt or incompetent.”

To the extent that the allegation 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, any assertions of corruption or incompetence 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.”

Appeal 2

Complainant complains that the circuit judge improperly denied her petition for a certificate of appealability, imposed a \$250 sanction, and barred her “from filing criminal matters.”¹

The allegation relates directly to the merits of decisions or procedural rulings and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Appeal 3

Complainant alleges that the circuit judge “issued an order precluding [me] from filing any more documents “in a district court or appeal in this circuit” in retaliation for [my] filing a grievance against her and [a deputy clerk] in [Appeal 2].” She complains further that the preclusion order was “a direct assault” on a pending appeal that was administratively terminated pursuant to that order.

¹ Complainant appears to complain that the district court illegally denied her petition for a writ of coram nobis in the case, but she did not identify the presiding judge as a subject of the instant complaint. If the judge had been named, the allegation would be subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii) as directly related to the merits of a decision or procedural ruling.

To the extent that the allegations relate directly to the 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 allegation of retaliatory motive 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 third merits-related and conclusory or frivolous complaint. Complainant is WARNED that should she file a further merits-related, conclusory, frivolous, or repetitive complaint, her right to file complaints may be suspended and, unless she is able to show cause why she should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman

Priscilla Richman

Chief United States Circuit Judge

March 25, 2023

FILED

July 19, 2023

Lyle W. Cayce
Clerk

**Before the Judicial Council
of the Fifth Circuit**

Complaint Numbers: 05-23-90007 through 05-23-90009

Petition for Review by [REDACTED] regarding
Complaint of Misconduct and/or Disability Against

[REDACTED]

[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Priscilla R. Owen, filed March 29, 2023, dismissing the Complaint of [REDACTED] against [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

July 19, 2023
Date

Jennifer W. Elrod

Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit