

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90014

MEMORANDUM

Complainant, a federal detainee, alleges that the subject United States District Judge has “collu[ded] and conspir[ed]” with Assistant United States Attorneys, United States Customs and Border Protection agents, and a Federal Public Defender to “pressure me to plead guilty” in a pending criminal proceeding. For example:

- Complainant claims that the judge gave him “*last chance* lectures . . . on four different occasions” in 2023, saying: “This is your last chance to take responsibility for your actions and get a lesser sentence.” A review of the audio-recordings of the relevant hearings shows that the judge did not make the remark complainant attributes, or any other remarks that could be construed as “pressuring” him to plead guilty.
- Complainant claims that the Assistant United States Attorneys and United States Customs and Border Protection agents colluded to file a superseding indictment adding offenses from another date to further “pressure” him to plead guilty, and he alleges that the judge’s denial of his motion to sever the two sets of offenses constitutes further evidence of the judge’s participation in the conspiracy against him.

To the extent that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent the complaint alleges that the judge made remarks aimed at pressuring him to plead guilty, the allegations are not supported by the audio-recordings of the relevant hearings 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.” In other respects, the conclusory assertion that the judge colluded and conspired with Assistant United States Attorneys, United States Customs and Border Protection agents, and the Federal Public Defender is also 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 claims that the Federal Public Defender “told me that [the judge] was not going to allow our motion to suppress evidence,” and he submits that the statement demonstrates that defense counsel “was meeting with [the judge] about my case.”

Even if the Federal Public Defender made the statement attributed to her, there appears to be nothing improper in advising a defendant that a (prospective) motion was unlikely to be granted,¹ and any such legal advice does not constitute evidence of ex parte communication with the judge. The conclusory assertion 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.”

¹ According to the docket, the Federal Public Defender did not file a motion to suppress prior to the termination of her representation in October 2022.

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 Richman

Chief United States Circuit Judge

December 30, 2023

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

United States Court of Appeals

Fifth Circuit

FILED

April 16, 2024

Lyle W. Cayce
Clerk

Complaint Number: 05-24-90014

Petition for Review by [REDACTED]

Regarding Complaint of Misconduct and/or Disability Against

[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 Richman, filed January 9, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Date

April 12, 2024

Jennifer W. Elrod

Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit