

FILED

May 20, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90067

MEMORANDUM

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

Complainant filed a complaint in October 2023 alleging misconduct by the judge in the same case. That complaint was still pending at the time a status conference was held in January 2024. In his second complaint, complainant alleges that during and after the status conference, the judge “retaliat[ed] against me for participating in the Judicial Conduct [Complaint] Process and for Reporting Judicial Misconduct.” In support of this allegation, complainant asserts:

- The judge denied his motions not on their merits, but “for being submitted too late even though they were based on information from the prosecution evidence received in [the] last few weeks.”¹
- “My biggest concern and the most flagrant violation of my rights was [the judge’s] statements made directly to me in the court and on record. This was what was said as best I can remember it. . . . [Judge]: “[Complainant], you are responsible for all of the delays in your case. Your trial would have taken place next week if you

¹ Complainant sought leave to file a motion to change venue, a motion to set aside the indictment for violation of his constitutional right to a speedy trial, and a motion to recuse the judge.

had not filed a complaint of misconduct against me in the 5th Circuit Court. If you want your trial next week, you can but you have to dismiss your complaint against me.””

- “[The judge] also went on to say that she could not respond [to] our motion for her to recuse herself until the Fifth Circuit made a ruling [on the pending misconduct complaint].”
- “Later that day [the judge] called my attorney and said she had received a notice that my complaint was dismissed, and she was going to start the trial [the following week] as scheduled.”

Complainant contends that the judge’s “statement [sic] and denying our motions [were] clearly retaliation against me. She was very angry and not in control of herself. I think her action was a form of extortion. She would allow my trial to go on but only if I withdrew the complaint I [had] made about her.”

No official transcript of the status conference has been entered on the docket, however a review of the audio-recording of the hearing shows:

- The judge informed complainant that she was denying leave to file the pretrial motions to change venue and to dismiss the indictment because the trial was set to commence the following week.
- Regarding complainant’s motion to dismiss the indictment for violation of his constitutional right to a speedy trial, the judge remarked that any delays were largely due to complainant’s actions, including his filing numerous “late motions.”²
- The judge stated that the trial would not commence until complainant’s pending misconduct complaint was resolved.

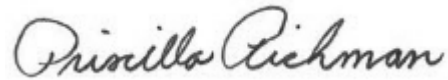
² The unofficial transcriptions set out herein were prepared solely for the purpose of reviewing the underlying complaint.

- The judge did not say: “If you want your trial next week, you can but have to dismiss your complaint against me.”
- The judge did not say that “she could not respond to [complainant’s] motion for her to recuse herself until the Fifth Circuit made a ruling.” Rather, she stated: “I’m not going to recuse myself because there aren’t any grounds for it at this point.”
- The judge maintained a calm demeanor throughout the hearing.

To the extent that these 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, any assertions of “anger” and “retaliation” against complainant for participating in the complaint process or attempting to “extort” him to withdraw the pending complaint 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.



Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

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