

FILED

September 6, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90104

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge in a 28 U.S.C. § 2255 proceeding, and he purports to allege misconduct by unspecified circuit judges in Appeal 1 and Appeal 2.

Background

The district court docket records that the district judge transferred Complainant's 28 U.S.C. § 2254 petition to the United States Court of Appeals for the Fifth Circuit ["the Fifth Circuit"] for consideration as a motion for authorization to file a successive § 2254 petition. After the district judge denied Complainant's motion for reconsideration, Complainant filed a "Notice of Intent and Request of COA" (hereafter "Notice of Intent") in which he explicitly stated he had a right to appeal the transfer order. The Notice of Intent was entered on the district court docket as a Notice of Appeal, and it was then transmitted to the Fifth Circuit Clerk's Office which opened Appeal 1. The appeal was dismissed for want of prosecution.

After the district judge denied Complainant's further motions without prejudice for lack of jurisdiction, Complainant refiled the Notice of Intent which was entered on the district court docket as a Notice of Appeal.

It was then transmitted to the Fifth Circuit Clerk's Office which opened Appeal 2. The appeal was dismissed for want of prosecution.

Allegations

In the instant complaint, Complainant protests: "I did not file an appeal. I filed for COA in the USDC which was denied." He alleges that "judges of the 5th Cir. U.S. COA . . . committed felonies in office by falsifying court records," i.e., by intentionally misconstruing his Notices of Intent as Notices of Appeal.

A review of the appellate dockets shows that Appeal 1 and Appeal 2 were opened by Fifth Circuit Clerk's Office personnel, and no circuit judges were assigned to either matter prior to the Clerk's entering orders of dismissal for want of prosecution.

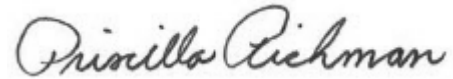
Complainant's allegation that circuit judges played any role—improper or otherwise—in opening the appeals is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant recounts that he filed motions notifying the district judge of the unspecified circuit judges' criminal conduct in opening the two appeals, but the district judge "did nothing about it." Complainant asserts that the district judge's inaction constitutes evidence of a "cover up" which "is also a crime."

A review of the district court docket indicates that the district judge denied the motions without prejudice for lack of jurisdiction and, to the extent that these allegations relate directly to the merits of those decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of improper motive appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported and is 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.

A handwritten signature in cursive script that reads "Priscilla Richman". The signature is written in black ink and is positioned above a horizontal line.

Priscilla Richman
Chief United States Circuit Judge

September 5, 2024