

FILED

September 6, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90105

MEMORANDUM

Complainant, a federal prisoner, has filed a complaint alleging “gross misconduct,” “discrimination,” “bias,” and “corruption” by the subject United States District Judge during a March 2024 sentencing hearing.

According to the record, Complainant legally changed his name in early 2023, yet he appeared under oath before the judge several times between April and November 2023 under his former name. It appears that the judge learned of the name change in early March 2024 when he received ex parte correspondence which Complainant signed with his new Native American name. Complainant complains that instead of chastising the Assistant United States Attorney [“AUSA”] and defense counsel for failing in their duty to notify the court of the name change, the judge “discriminated against me” and demonstrated “the corruption that goes on in his Court Room” by “only h[olding] me responsible.”

Complainant further alleges that the judge demonstrated bias by saying “I was not entitled to attorney client privilege anymore.” A review of the record shows that the remarks at issue were made after defense counsel—in response to the judge’s inquiry about the basis of counsel’s motion to withdraw—stated that he was concerned about violating attorney-client privilege. The judge remarked that attorney-client privilege did not apply for the limited purpose of defending the motion to withdraw, and he emphasized that the court did not want to know about the merits of any offense or

defenses Complainant might have urged. Defense counsel explained that he had moved to withdraw because he believed that he could not make certain arguments Complainant wanted made in a motion to withdraw the guilty plea without violating attorney ethics. He declined to elaborate further because he did not want to risk breaching attorney-client privilege, and the judge did not press the matter.

Complainant recounts that in his ex parte letter (which the court construed as a motion to withdraw the guilty plea), and again during the sentencing hearing, he explained how the Government and defense counsel had allegedly violated his constitutional and due process rights. Complainant asserts that the judge's denial of the motion was erroneous, improper, and biased. In support of this claim, he submits that:

- The judge disagreed with Complainant's argument that because he had told defense counsel that he wished to withdraw the guilty plea "within the allotted 72-hour time frame that I'm allowed to do so," the court should summarily grant the motion to withdraw the guilty plea.
- The judge "does not equally apply the law when it comes to Federal Agencies," i.e., he erroneously and improperly held that Complainant's claim that the AUSA and an FBI agent "put forth false information to the Grand Jury" was not relevant to the court's consideration of the motion to withdraw the guilty plea.
- The judge: did not find credible Complainant's claim that his guilty plea was not voluntary because prior defense counsel told him the judge "was callus, jaded, and that he had been on the bench too long, and he didn't care if the FBI or anybody else lies in his courtroom as long as they put somebody in jail"; declined to consider evidence in support of the claim; and failed to report the attorney's misconduct to the State Bar.


To the extent that these allegations relate directly to the merits of decisions and rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias, corruption, and discrimination appear entirely derivative of the merits-related charge, 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.”

In addition, Complainant protests that the judge was “extremely disrespectful and butcher[ed] my name.” A review of the record shows that the judge generally referred to Complainant as “Mr. X,” i.e., the name by which the court had known him for 25 months. The first time the judge corrected himself, he misstated Complainant’s unfamiliar Native American name.

After reviewing the audio-recording of the hearing, I conclude that nothing in the judge’s tone of voice or demeanor supports the allegation that his single misstatement of Complainant’s unfamiliar Native American name was intentional, let alone intentionally disrespectful. This aspect of the complaint is therefore 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.”

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

September 5, 2024