

**FILED**

November 14, 2022

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-22-90090

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## MEMORANDUM

Complainant, a federal prisoner, has filed a complaint alleging misconduct by the subject United States District Judge who presided over his criminal trial proceedings.

Complainant claims that his attorney on remand “informed me that [the judge] was ‘pissed’ at me for my successful appeal and . . . called me a ‘know it all n[-----]’ and went on to state with regards to fair rulings ‘that c[-]n has nothing coming.’” Complainant further claims that his attorney declined complainant’s request to “put that on the record,” stating: “This is my place of work. I cannot do that. If you bring this up I will deny it and I’ll be sure not to help you.”

A limited inquiry was conducted pursuant to 28 U.S.C. § 352(a)(2) and Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant’s attorney denied making those statements to complainant and denied that the judge ever said those things to him. This aspect of the complaint is therefore incapable of being established through investigation and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

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<sup>1</sup> See Rule 11(c)(1)(E), Rules for Judicial-Conduct and Judicial-Disability Proceedings, Guide to Judiciary Policy, Vol. 2E. Ch. 3, § 320.

Complainant appears to further assert that the judge's racial animus was evident during a sentencing hearing on remand, but he offers no evidence other than recounting that he "called [the chief judge] a racist on the record." Complainant also claims that "the Blacks that goes [sic] before [the judge] know him as 'Hang 'Em [last name],' this goes to the sentencing disparity of Blacks and non-White[s] or more specifically Whites."

To the extent that the allegations relate directly to the merits of the judge's decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of racial animus 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."

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.



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Priscilla Richman  
Chief United States Circuit Judge

November 10, 2022