

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JAN 04 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-16-90133 and 05-16-90134

MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject United States District Judge (retired) and the subject United States Magistrate Judge. Complainant's allegations are premised on the belief that he does not owe filing fees in four district court proceedings and/or in associated appeals.

The complaint is largely unintelligible and, after reviewing the dockets in the four cases, it appears that complainant is alleging that the judge and the magistrate judge:

- engaged in "malicious prosecution based on prejudice" by "collecting money" from his inmate trust account to pay "fraudulent" district court and appellate filing fees;
 - For example, complainant submits that an appellate filing fee "is chargeable when [an appeal] is taken ... The only fact issue here is the appeal [from a 1995 district court matter] was denied and was not taken, therefore the appeal was not chargeable."
 - He further contends that he did not owe a filing fee in a 2001 district court proceeding because, prior to the court's granting the defendant-prison authority's motion for summary judgment, complainant's claims against the defendants were "resolved in his favor" when he was moved to another prison unit.

- engaged in “harassment and retaliation ... bribery, fraud, and money laundering” by imposing two filing fees for a single appeal in the 1995 proceeding;
- denied his numerous motions objecting to the filing fees;
- permitted complainant to file lawsuits by ignoring—deliberately, inadvertently, or through incompetence—a Fifth Circuit order barring him from filing any lawsuit or appeal without prior permission of an active judge of the forum court. He protests that if the judge and/or magistrate judge had, pursuant to the appellate sanction, ordered the clerk not to file his lawsuits, “there would be no charges to [my] inmate trust account”;
- dismissed at least one lawsuit by making “a materially fake, fictitious, or fraudulent statement” that complainant failed to obtain prior permission to file;
- denied class action certification for a lawsuit complainant filed with three other inmates, improperly separated the action into four separate lawsuits, and then fraudulently imposed a filing fee for a lawsuit complainant “did not file”;
- showed “hostility or extreme prejudice” by withdrawing filing fees from his inmate trust account before cases were closed;
- as filing fees increased in the years after his cases were closed, “retroactively” increased the fees in his cases so that more money was withdrawn from his inmate trust account; and,
- kept some or all of the filing fees for themselves.

Complainant also complains generally that the judge permitted the magistrate judge to enter rulings without jurisdiction.

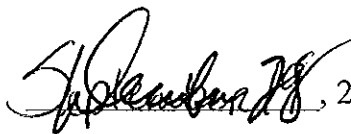
The subject district judge retired from the office pursuant to 28 U.S.C. § 371(a), and is no longer an Article III judge. A judge’s resignation from office renders that judge “no longer subject to the disciplinary procedures of Section 372(c) [now 28 U.S.C. § 351 et seq.] and the remedies they prescribe.” In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Judicial Council 1996); In re Complaint of Judicial Misconduct, 10 F.3d


99, 100 (3rd Cir. Judicial Council 1994) (“In effect, the retirement of a judge moots the complaint because there is no effective remedy under the statute.”). The judge’s resignation is an intervening event that makes action on the complaint unnecessary, and the complaint against him is therefore concluded pursuant to 28 U.S.C. § 352(b)(2).

To the extent that the complaint relates directly to the merits of the magistrate judge’s decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias, retaliatory conduct, and theft of fees are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

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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Carl E. Stewart
Chief Judge

U. S. COURT OF APPEALS
FILED

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90133 and 05-16-90134
Petition for Review by [REDACTED]
of the Final Order Filed January 4, 2017
Dismissing Judicial Misconduct Complaint Against
[REDACTED]
Under the Judicial Improvements Act of 2002.

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 Stewart, filed January 4, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

February 23, 2017
Date

Priscilla R. Owen
Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit