

JAN 04 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Complaint Number: 05-17-90012

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MEMORANDUM

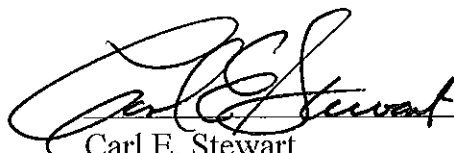
Complainant, a *pro se* litigant, alleges that the subject United States District Judge engaged in *ex parte* communications with the defendant or with defense counsel. In support of this contention, complainant notes that the judge's order granting summary judgment was different from the proposed order filed by the defendant, and it contained "new false statements ... [that] cannot be found in any other files in the case." He appears to contradict the latter claim by noting that the "errors in Judgment ... are the same as Defendant's Support Motion for Summary Judgment." Complainant contends that "the proposed order has to be put into the case system or judge would contact or be contacted from [sic] a party to get the proposed order." He also points to typographical differences in "style and format" between various orders in the proceeding.

The judge's writing of an order independent of the defendant's proposed order, the use of language from the defendant's motion for summary judgment in the order granting summary judgment, and typographical differences between orders, do not constitute evidence of *ex parte* communication between the judge and the defendant. The allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent, if any, that the allegation relates directly to the merits of the judge's decision, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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.

~~December 28~~  
November 5, 2016

  
Carl E. Stewart  
Chief Judge

MAR 02 2017

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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No. 05-17-90012  
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.

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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.**

Date

February 23, 2017

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