

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
AUG 01 2017
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-17-90043

MEMORANDUM

Complainant, a *pro se* litigant, has filed a convoluted and largely unintelligible judicial misconduct complaint against the subject United States District Judge. The Clerk of Court asked complainant to provide further information in support of certain claims, and complainant's responses are considered here as part of the consolidated complaint.

Complainant filed a civil rights lawsuit against a bank and against several individuals, including Attorney X, regarding allegedly fraudulent foreclosure proceedings. In granting the defendants' motion for a more definite statement, the judge ordered complainant to file an amended complaint alleging specific facts establishing subject matter jurisdiction and establishing that complainant had plausible claims against each defendant. After complainant failed to comply with the order, the judge dismissed the lawsuit.

In his initial complaint, complainant asserted that the judge ruled in favor of the defendants because the judge and Attorney X are "friends" and are "within the third degree." The Clerk of Court afforded complainant two opportunities to provide evidence of either a personal friendship, or a disqualifying degree of relatedness as described in the

Canons 3(C)(1)(d) and 3(C)(3)(a) of the Code of Conduct for United States Judges.¹ Complainant responded that the judge and Attorney X are both members of the State Bar, and that the judge “is practicing law from the bench in the third degree.”

Complainant submits that this purported conflict of interest demonstrates that the judge’s adverse rulings, including dismissing the lawsuit without the defendants having filed a motion to dismiss, constitute evidence of “conspiracy,” “extra legal abuse,” and “special treatment to his friend [Attorney X].” He further contends that the judge “demonstrated the practice of pigeon holding [sic] the evil and deceitful black art of blocking a Pro Se litigant from going forward on their claim and prevent them from appealing ... and discrimination on the bases [sic] of Pro Se, race, religion and national origin.”

Without presenting any evidence other than the adverse rulings, complainant also alleges that the judge: “never allowed no effort to mediate or settle pending matter;” “engaged in partisa [sic] polilas [sic] activity making inappropriately partism [sic] in dismissing case;” “compos[ed] a void order;” “acted in absence of subject matter

¹ Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

...

(C) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which:

...

(d) the judge or the judge’s spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

(i) a party to the proceeding, or an officer, director, or trustee of a party;

...

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;

...

jurisdiction;" "lends his office to convey a dismissal acting as a character witness;" and "has personal bias and prejudice concerning American National Black and Afro-American as evident of dismissal and extortion \$400.00 for denial of due process."

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



Carl E. Stewart

Chief Judge

July 29, 2017

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-17-90043
Petition for Review by [REDACTED]
of the Final Order Filed August 1, 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 August 1, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

September 21, 2017
Date

Priscilla R. Owen

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