

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**

AUG 01 2017

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Complaint Number: 05-17-90053

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FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Circuit Judge lacked jurisdiction to act alone to deny petition for a certificate of appealability. In support of this contention, complainant cites F.R.A.P. 27(c) which provides that “a circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding.” However, Fifth Circuit Rule 27.2 and 27.2.3 provide that any single judge of this court has discretion, subject to review by a panel upon a timely-filed motion for reconsideration, to take appropriate action on ... “certificates of appealability under FED. R. APP. P. 22(b) and 28 U.S.C. § 2253 except for death penalty cases where a three judge panel must act.”

To the extent that the allegation relates directly to the merits of the judge’s ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation that the judge acted improperly is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further asserts that the judge “kep[t] [the petition] to herself ... for almost 5 months,” and states that he “ha[s] no doubt whatsoever that since her office is in ... close proximity to the [state appeals court], that she consulted long and hard with them and ended up conspiring to keep [his claims] from being addressed.”

Regarding the allegation of intentional delay, a review of the docket shows that the case proceeded normally and much of the purported “delay” was simply due to routine administrative procedures undertaken by the Clerk’s Office. Complainant presents no

evidence in support of his claim that the judge “conspired” with the state appeals court to deny him due process.

Such frivolous and conclusory allegations are insufficient to support a finding of judicial misconduct, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also contends that the judge “obtained” his petition for rehearing *en banc* “and answered in an undated, noncertified, with no court document number, one page order claiming a Per Curiam order which considered my motion ... as a motion for reconsideration which was denied.”


A review of the record clearly shows that the motion for reconsideration was considered by the subject judge and two other circuit judges, and their joint order was entered electronically in accordance with proper court procedure.

To the extent that the allegation relates directly to the merits of the decision of the subject judge and her fellow panel members, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of improper conduct are baseless, 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.

July 29, 2017

  
Carl E. Stewart  
Chief Judge

**FILED**

SEP 18 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-17-90053

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.

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ORDER

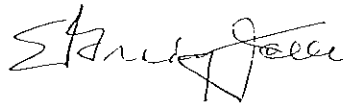
An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed August 1, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

15 Sept 17

Date



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E. Grady Jolly  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit