

FEB 03 2020

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90027 through 05-20-90030

M E M O R A N D U M

Complainant, a federal prisoner, has filed a judicial misconduct complaint against two United States District Judges [“Judge A and Judge B”] and a United States Magistrate Judge who entered rulings in complainant’s criminal proceeding and/or in four post-conviction proceedings. He also alleges misconduct by a third subject United States District Judge [“Judge C”] to whom he mailed ex parte correspondence.

Complainant claims that in the underlying criminal and post-conviction proceedings, and in correspondence mailed to Judge C, he presented the following “undisputed evidence”:

- “officers of the court” (i.e., state and federal prosecutors) “obstructed justice through the knowing use of perjured evidence, which violated [my] due process of law and [my] guaranteed right to a trial by a jury”;
- “there were two witnesses who could [have] testified to the events that took place with the State ADA in the [state court]”; and,
- “demonstrating [my] FPD’s deliberate and malicious withholding of exculpatory evidence from the USDC and [me].”

Complainant complains that despite being presented with this evidence, Judge A denied his motion to withdraw his guilty plea. He further alleges that through their inaction, Judge A, Judge B, Judge C, and the magistrate judge “swept these constitutional issues under the rug” and “turned a blind eye to this official misconduct . . . [and] used their judges’

offices to obtain special treatment for their friends and coworkers” (i.e., the federal and state prosecutors). He also asserts that the subject judicial officers “intentionally discriminated against [me] due to [my] race and religious beliefs. [I] was retaliated against for simply exercising [my] constitutional right to go before a jury of [my] peers.”

To the extent that these allegations relate directly to the merits of Judge A’s, Judge B’s, and the magistrate judge’s decisions and procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging that Judge C failed to convene a hearing on ex parte communications pertaining to issues raised in cases assigned to other district judges, Judge C’s conduct was entirely proper and the allegation of misconduct is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations of conflicts of interest, bias, discrimination, and retaliation appear entirely derivative of the merits-related charges, 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.



Priscilla R. Owen
Chief United States Circuit Judge

January 30, 2020 2020

FILED

April 9, 2020

Lyle W. Cayce
Clerk

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

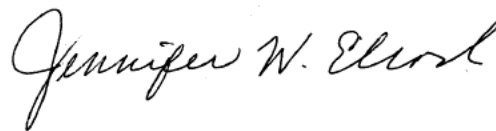
No. 05-20-90027 through 05-20-90030
Petition for Review by [REDACTED]
of the Final Order Filed February 03, 2020,
Dismissing Judicial Misconduct Complaint
Against [REDACTED]
[REDACTED]
[REDACTED]
Under the Judicial Improvements Act of 2002.

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 Priscilla R. Owen, filed February 03, 2020, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.
The Order is therefore **AFFIRMED**.

April 8, 2020

Date



Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit