

Judicial Council for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 15, 2021

Lyle W. Cayce
Clerk

Complaint Numbers: 05-21-90112 through 05-21-90124

MEMORANDUM

Complainant, a federal prisoner, has filed a complaint alleging judicial misconduct in a 2016 criminal proceeding and two related appeals, and in a 2018 civil proceeding and related appeal, by the ten subject United States Circuit Judges (“Circuit Judges A through J”), two subject United States District Judges (“District Judges X and Y”), and the subject United States Magistrate Judge.

Rule 26 request

Complainant requests that his complaint be transferred to another circuit pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings which provides that, “[i]n exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit.” In support of this request, complainant submits: there is a “pattern and practice [in the Fifth Circuit] of ruling that I am not entitled to full protection of the law, nor the legal rights granted to me”; the judges of this Court have (an unspecified) “direct, personal and substantial pecuniary interest in the outcome of this complaint”; and, if complainant’s “criminal accusations” against the subject judges “are untrue, someone else should decide such facts.”

I find that these conclusory assertions of bias and conflict of interest against all of the judges of this Court (and, by implication, the members of the

Judicial Council), even those who have not served on matters related to the underlying the instant complaint, do not constitute exceptional circumstances that would warrant my asking the Chief Justice to transfer the complaint to another circuit.

The Rule 26 request is DENIED.

2016 criminal proceeding, mandamus proceeding, and direct appeal

Complainant complains that an 18 U.S.C. § 3006(A)(e) motion for expert services filed “in the Fall of 2017 was not addressed until August 2, 2018. . . . The district court waited over 10 months to deny said request some 11 days before trial.” He further protests that District Judge X “flat-out denied” his motion for a continuance of the trial and thereby deprived him of “time to effectively adjust” to the denial of the § 3006(A)(e) motion.

Complainant’s allegation about a 10-month delay in ruling on his § 3006(A)(e) motion is not supported by the record. The August 2, 2018 order addressed four § 3006(A)(e) motions filed by complainant between March and June 2018. Those motions were referred to the magistrate judge by District Judge X on July 23, 2018 and, ten days later, the magistrate judge entered the order denying the motions.

To the extent that complainant is alleging District Judge X unduly delayed referring the motions to the magistrate judge, Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings provides that an allegation about delay in rendering a decision or ruling is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay.” As complainant does not appear to allege the former, and there is no evidence of the latter, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegation that the judge erroneously and improperly denied the motion for a continuance relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also asserts that the magistrate judge's denial of the § 3006(A)(e) motions was "a deliberate deviation from the Rule of Law so as to specifically violate my Constitutional rights, which is a violation of my civil rights, thus a crime under 18 U.S.C. § 242." In addition, he protests that "in extension of the corruption . . . [and] deliberate intent to violate [my] civil rights," Circuit Judges A, B, and C denied his petition for a writ of mandamus challenging the magistrate judge's decision.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias and "corruption" 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."

Complainant further complains that instead of ordering his attorney to file a supplemental *Anders* brief addressing complainant's extensive arguments challenging the "legal merits of the denial of expert assistance under § 3006A(e) [and] the denial of a trial continuance," Circuit Judge D asked the attorney to address complainant's claims of "prosecutorial misconduct and misapplication of § 3C1.1 penalty . . . two arguments comprising exactly 105 words out of 2048" (5th Cir. No. 18-11602).

This allegation relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant complains that Circuit Judges E, F, and G "wait[ed] 20 months to affirm" his conviction and sentence, and then denied his petition for rehearing. He submits that the circuit judges "deliberately manipulated and deviated from the Rule of Law [by] . . . disregard[ing] the cores issues of the district court's violations," thereby demonstrating "collusion under judicial bias."

Complainant's claim of a 20-month delay appears to be based on the time between the docketing of his Notice of Appeal and the date of the panel's opinion. However, a review of the docket shows that the matter became ripe for consideration after the panel's July 1, 2020 determination that oral argument would not be required, and the panel entered its opinion on August 4, 2020.

There is no evidence of undue delay and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that these allegations relate directly to the merits of the panel's decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of "collusion by judicial bias" appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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."

2018 civil proceeding and appeal

Complainant complains that District Judge Y, adopting the magistrate judge's recommendation, dismissed his lawsuit "as 'frivolous' in that I was filing suit (under 28 U.S.C. § 1331) against defendants (the United States of America and the United States Department of Justice) who are purported to be 'immune from suit'." He further complains that Circuit Judges H, I, and J ignored Fifth Circuit "jurisdictional" precedent and affirmed the district court's judgment "within a single-sentence opinion." Complainant concludes that the district and circuit judges "deliberately, purposefully and with obvious malice [sic] intent" violated his civil rights to "cover up" the defendants' "crime."

To the extent that these allegations relate directly to decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of "collusion by judicial bias" appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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.”

Additional Allegations

Complainant submits that the adverse rulings entered by the subject circuit, district, and magistrate judges constitute evidence of both “systemic racism” and bias against pro se litigants.

Such conclusory assertions of racism and bias are insufficient to raise an inference that misconduct has occurred, and the allegations 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.

This is complainant’s third judicial misconduct complaint to be dismissed as merits-related and/or frivolous under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

June 10, 2021

FILED

August 10, 2021

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Numbers: 05-21-90112 through 05-21-90124

The Petition for Review by [REDACTED] Against

[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 June 15, 2021, dismissing the Complaint against

[REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.
The Order is therefore **AFFIRMED**.

July 28, 2021
Date

Jennifer W. Elrod
Jennifer W. Elrod

United States Circuit Judge
For the Judicial Council of the Fifth Circuit