

FILED

January 10, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90004 through 05-22-90006

MEMORANDUM

Complainants, pro se litigants in a pending civil proceeding, have filed a complaint alleging misconduct by the subject Chief United States District Judge, United States District Judge, and United States Magistrate Judge.

Complainants complain that in recommending that the court grant the defendants' motions for summary judgment, and in adopting those recommendations, the magistrate judge and district judge, respectively, "failed to look solely to the record, as well as applicable rules of law to decide [our] case against the defendants." They further allege that "the actions complained of were taken in complete absence of all jurisdiction."

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 assertion of bias towards the defendants 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."

Complainants also complain that their "Motion for Leave or Motion to Amend Order and Judgment"¹ has been pending before the magistrate

¹ There is no such motion on the docket. It appears that complainants are referring to a Motion for Leave to File Motion for Reconsideration, attached to which was Exhibit A, entitled "Motion to Amend Order and Judgment".

judge for six months, they submit that this undue delay constitutes “evidence [of] an improper motive,” “extreme unfairness,” “preferential treatment favoring the defendants,” “manipulat[ion] [of] established court procedures so as to accomplish their personally desired result,” and “arbitrariness and abusiveness that has brought disrepute on [sic], and discord with, the federal judiciary.” They further contend that the district judge has been “inattentive” to the magistrate judge’s delay in entering a ruling, and that the “integrity, impartiality, and fitness to serve” of both judicial officers “are impaired.”

Delay in rendering a decision is not, in and of itself, evidence of judicial misconduct. *See* Rule 4(b)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainants’ conclusory assertions that the delay is deliberate, “arbitrary,” and “abusive” and has been ignored by the district judge 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).

In addition, complainants assert that the district judge and the magistrate judge have subjected them to “relentless harassment.” In support of this claim, they state that “since the beginning, in every single ruling issued by the court, the document number has always been covered over.” Complainants have provided copies of orders in the underlying proceeding and in a second proceeding (assigned to another district judge) on which the headers—i.e., “Case No. [X]”, “Document No. [X]”, “Filed [Date]”, and “Page [X] of [X]”—generated by CM-ECF are compressed so that the filing dates and page numbers overlap with, and obscure, the document numbers.

A review of the .pdfs of those orders in PACER shows full headers without any compressed or overlapping information. Regardless, judicial officers are not responsible for the programming of headers on documents in CM-ECF or for printing copies of orders to be mailed to litigants, and the assertion that the irregular headers constitute evidence of judicial

“harassment” is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainants report that they filed an Advisory to the Court containing “information constituting reasonable grounds to inquire into possible misconduct” by the district judge and the magistrate judge, but the chief district judge failed to commence an inquiry “under Rule 5” of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. They submit that the chief district judge’s “inaction equates to [a] willful and persistent failure to perform [a] duty of office.”

Complainants have misinterpreted the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

- Rule 5(a) provides that “[w]hen a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. . . .”
- Rule 3(a) provides that the “chief judge” who may conduct an inquiry into possible misconduct by a circuit, district, bankruptcy, or magistrate judge is “the chief judge of a United States court of appeal.”

Complainants do not explain how the chief district judge would be aware of an advisory filed in a matter assigned to another judge. Regardless, the chief district judge has no jurisdiction to conduct an inquiry under Rule 5 because he is not “the chief judge of [the United States Court of Appeals for the Fifth Circuit]” and these allegations are therefore subject to dismissal as frivolous 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 complainants' second merits-related, conclusory, and frivolous judicial misconduct complaint regarding the same proceeding. Complainants are WARNED that should they, together or individually, file a further merits-related, conclusory, frivolous, or repetitive complaint, their right to file complaints may be suspended and, unless they are able to show cause why they 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

January 4, 2022

FILED

March 4, 2022

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Numbers: 05-22-90004 through 05-22-90006

Petition for Review by [REDACTED]
of the Final Order Filed January 10, 2022,
dismissing the 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 January 10, 2022, dismissing the Complaint of [REDACTED]

against [REDACTED]

[REDACTED] under the
Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

March 2, 2022
Date
Jennifer W. Brod
Jennifer W. Brod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit