

FILED

November 14, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90083

MEMORANDUM

Complainant, a civil litigant, reports that during a settlement conference in his employment discrimination case, a United States Magistrate Judge stated that the subject United States District Judge “was not going to allow the case to go to court and would dismiss it in the morning.” The magistrate judge then called the judge on her cell phone and, according to complainant, the judge made the following improper remarks:

- He had a long relationship with the magistrate judge, recognized her accomplishments, and had “trust in her”;
- He did not think complainant had a valid claim under the Americans with Disabilities Act [“ADA”];
- Complainant’s complaint of gender discrimination was “hanging by a thread”;
- An appeal “was not good to do because of the time and money involved and it still was not guarantee [sic] that it would make it to court”; and,
- “He felt as though I was misadvised by my representing attorneys who had new evidence but did not present it to the Judge at that time nor did he file it on time.”

Complainant, a disabled veteran, recounts that the judge’s comments “created a sense of hopelessness and caused me to become very sad,” and he complains that the judge was wrong about him not having a valid ADA claim.

The allegation relates directly to the merits of decisions or procedural rulings and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the judge’s stating his opinions “prior to the decision made it seem to me as a strategy of bullying and abuse of power and influence . . .”, and that “this settlement was not fair.”

The Committee on Codes of Conduct Advisory Opinion No. 95: Judges Acting in a Settlement Capacity¹ opines that:

- “a trial judge’s participation in settlement efforts is not inherently improper under the Code”;
- in a nonjury case (as here), the judge “may be involved in settlement discussions, probe the parties’ assessments of the value of the case, review the parties’ settlement offers (and perhaps suggest to them specific settlement amounts)”;
- “there is no *per se* impropriety in a judge’s participation in settlement discussions or in a judge’s conduct of a trial following participation in settlement talks”;
- and,
- “whether ethical concerns arise in a particular proceeding is a specific determination that depends on the nature of the judge’s actions and whether the judge’s impartiality might reasonably be questioned,” i.e., whether “comments a judge makes in the course of settlement discussions . . . create an appearance of bias.”²

To the extent that complainant alleges that the judge improperly pressured him to settle, complainant makes no allegation that the judge was misrepresenting his beliefs as to the merits of the case, or his likely action if the case did not settle. While it might be better practice for a judge to refer such settlement discussions to another judge or magistrate judge, the judge’s statements do not reasonably create an appearance of bias.

¹ Guide to Judiciary Policy, Vol. 2B, Ch. 2, § 220, at 164-166.

² *Id.*, at 165.

This aspect of the complaint 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.”

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 Richman

Chief United States Circuit Judge

November 10, 2022

FILED

February 8, 2023

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-22-90083

Petition for Review by [REDACTED] regarding
Complaint of Misconduct and/or Disability Against

[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

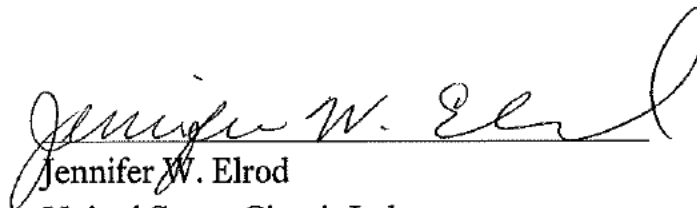
ORDER

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 United States Circuit Judge Priscilla Richman, filed November 14, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Feb. 3, 2023

Date



Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit