

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

JAN 03 2010

Docket Number: 05-18-90017

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

MEMORANDUM

Complainant, a pro se federal civil litigant and former federal criminal defendant, complains of the subject United States District Judge, who presided over both complainant's criminal trial in 1989, and a civil suit filed against complainant and others in 1987 in which collection efforts regarding a judgment against complainant remain ongoing.

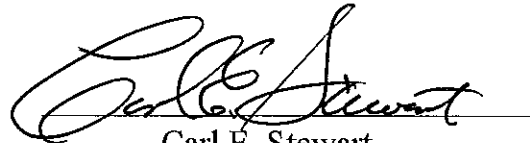
Complainant asserts that he is the owner of a health care Preferred Provider Organization ("PPO"), and that the subject judge at one time was president of the board of a New Orleans hospital. Complainant does not argue, and points to no evidence, that the judge's service as president of a hospital board had anything to do with the issues raised in either the criminal or the civil case. Rather, he argues that hospitals and PPOs have an inherently adversary relationship, and that "[s]urely, issues arose... which has and continues to cause a conflict today." He urges that the judge therefore committed misconduct by failing to recuse himself from complainant's cases under 28 U.S.C. § 455(a).

Complainant's unsupported allegation that the judge must have had an unspecified, but recusable, conflict is subject to dismissal under 28 U.S.C. § 352(b)(1)(iii) as frivolous and as lacking sufficient evidence to raise an inference that misconduct has occurred.

Complainant also alleges that in 1983, he was invited to lunch at the U.S. District Court cafeteria with another judge, and that during or after the lunch, "it was said that a too young of a person with a latin [sic] heritage should not have been invited for obvious reasons. Complainant concludes that this may have been the feelings of [the subject judge]."

Complainant does not identify who made this alleged statement, and provides no support for his conclusion that the subject judge, who is not alleged to have been present at the lunch, “may have” felt this way. This allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(iii).

An order dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart
Chief Judge

December 29, 2017

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

APR 02 2018

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

No. 05-18-90017

Petition for Review by [REDACTED]
of the Final Order Filed January 3, 2018,
Dismissing Judicial Misconduct Complaint
Against [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 Stewart, filed January 3, 2018, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

March 27, 2018
Date

Priscilla R. Owen
Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit