

NOV 06 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90012 through 05-20-90015

MEMORANDUM

Complainants, civil litigants, have filed a judicial misconduct complaint against the subject United States Magistrate Judge who, presiding by consent, granted the defendants' motions for summary judgment in complainants' lawsuit challenging foreclosure proceedings. They also allege misconduct by the three subject United States Circuit Judges in affirming the district court's judgment.

Complainants allege that the magistrate judge should have recused herself *sua sponte* due to a conflict of interest because, prior to becoming a magistrate judge, she "owned a business representing mortgage companies, including [the three defendants]" in the underlying district court proceeding. In support of this claim, complainants refer to a press release announcing that the law firm the magistrate judge opened years prior to taking the bench would represent companies in criminal and civil matters, including (unspecified) companies in the mortgage banking industry. A review of PACER indicates that prior to taking the bench, the magistrate judge represented mortgage lenders in eight federal proceedings, none of whom were defendants in complainants' lawsuit.

Regardless, the allegation relates directly to the magistrate judge's implicit decision not to recuse *sua sponte*, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainants further assert that the magistrate judge "misrepresented facts of our law suit," and in support of which claim they

have submitted a sixteen-page summary of purported “misrepresentations” and errors in the magistrate judge’s orders granting the defendants’ motions for summary judgment. Complainants protest that “the most misleading opinion” was the statement: “Neither the mortgagee . . . nor the servicer . . . are required to recognize tax deferrals.” Complainants argue that “the State [Law] is the law for anyone that operates a business in that particular State, and this could be aiding and abetting illegal action for certain companies or entities.” They also appear to complain that in granting the defendants’ summary judgment motions, the magistrate judge violated their constitutional right to “Trial by a Jury.”

To the extent that these allegations relate directly to the merits of the magistrate judge’s decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation of “aiding and abetting illegal action for certain companies or entities” 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).

In addition, complainants complain that the circuit judges erroneously affirmed the district court’s judgment, and in support of which claim they have submitted a ten-page summary of purported errors. They further protest that the circuit judges’ opinion included the following footnote: “*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH Cir. R. 47.5.4.” Complainants appear to contend that 5TH CIR. R. 47.5 is unconstitutional and/or that the circuit judges’ decision not to publish the opinion was “personal,” “discrimination” or constitutes evidence of “corruption.”

To the extent that these allegations relate directly to the merits of the circuit judges’ decisions or procedural rulings, they are subject to dismissal

under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of personal animus, discrimination, 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).

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

November 2, 2019

JAN 06 2020

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-20-90012 through 05-20-90015
Petition for Review by [REDACTED]
of the Final Order Filed November 6, 2019,
Dismissing Judicial Misconduct Complaint

Against [REDACTED]

Under the Judicial Improvements Act of 2002.

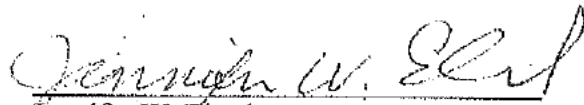
ORDER

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 Priscilla R. Owen, filed November 06, 2019, dismissing the Complaint of [REDACTED] against [REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore AFFIRMED.

12/21/19
Date


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