

NOV 22 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90018 and 05-20-90019

M E M O R A N D U M

Complainant, a pro se litigant, has filed separate judicial misconduct complaints regarding rulings entered by the subject United States District Judge and the subject United States Magistrate Judge in the underlying civil proceeding.

Allegations against Magistrate Judge

Complainant alleges that “based on . . . document format, obvious false statements, wording, tones, contents, and identical signature[s]” in the magistrate judge’s initial memorandum and amended memorandum, “[a] reasonable person would conclude both documents were drafted and forged by Defendant.”

Complainant’s recitation of “obvious false statements, wording, tones, contents” that allegedly prove the memoranda were prepared by the defendant includes the following:

- Given that the magistrate judge granted complainant’s motion to file an amended complaint, and because the amended complaint named a new party and raised additional causes of action, the magistrate judge “would not write” that the underlying lawsuit was “an attempt to relitigate” a prior lawsuit and that complainant’s claims were barred by res judicata.

- Given that the magistrate judge stated he had reviewed all of complainant's filings, he “would not write” the “false and illogical statement” that complainant alleged no facts to suggest that the defendant had engaged in discriminatory conduct since the prior lawsuit was dismissed.
- The two memoranda (and an earlier order) have “identical signature[s].” He concludes “[t]he signatures were forged” by the defendant” because “no one in the world can sign his/her name exactly the same way twice.”

Complainant further submits that because the purported draft memoranda were not entered on the docket and copies were not served on him, the defendant transmitted the drafts to the magistrate judge ex parte.

Complainant also complains that in recommending that the defendant's motion to dismiss for failure to state a claim should be granted, the magistrate judge improperly denied various (non-dispositive) motions.

To the extent that these allegations relate directly to the merits of the magistrate judge's rulings or procedural decisions, including denying complainant's motion to verify his signature, the allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions that the magistrate judge engaged in ex parte communication with, and entered memoranda “drafted and forged” by, the defendant 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).

Allegations against Judge

Complainant alleges that “based on the order format and contents (obvious false statements, facts, and wording)” in the judge's order denying his motion for entry of default judgment, “[a] reasonable person would

believe that [the defendant] wrote the order and sent it to [the judge] for his signature.”

In support of this contention, complainant notes that the caption on the order was “different from [the judge’s] typical . . . order format . . . which could be identified easily by wordings, position of divided line,” i.e., the caption on the order was identical to the caption on the defendant’s response opposing complainant’s motion for default judgment. However, a review of the orders entered in the case shows at least four different variations in the formatting of the caption and, contrary to complainant’s assertion, the caption on the order at issue was not identical to the caption on the defendant’s pleading.

Complainant further proposes that because the purported draft order was not entered on the docket and a copy was not served on complainant, the defendant transmitted the draft to the judge ex parte.

Complainant also claims that the judge’s summary of facts included “some very important and obvious mistakes” purportedly identical to errors and misrepresentations of fact made in defense pleadings, and which complainant alleges constitute further evidence of improper ex parte communication between the judge and the defendant.

In addition, complainant complains the judge erroneously, prejudicially, and “disgracefully” denied the motion for default judgment “[w]ithout verifying [the defendant’s] statements” (including an allegedly perjurious defense witness affidavit), and “[without] comparing with any facts, evidences [sic] and questions from [my] motion.” He further protests that the judge “vacated” rather than “cancelled” the default judgment hearing scheduled for the following day.

To the extent that these allegations relate directly to the merits of the judge’s rulings or procedural decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, typographical similarities

between the caption on defendant's response opposing default judgment and the caption on the judge's order denying default judgment, and similarities between purported errors in the facts presented by the defendant and the facts summarized by the judge, do not constitute evidence of improper ex parte communication or prejudice. Such conclusory assertions 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).

Other allegations

Complainant notes that the captions of a memorandum entered by the magistrate judge and three orders entered by the judge share an identical typographical error: "tUNITED STATES DISTRICT COURT". Complainant submits that this clerical error constitutes additional proof that the magistrate judge and the judge "used and approved" memoranda/orders prepared by the defendant.

This utterly conclusory assertion is insufficient to raise an inference that misconduct has occurred, and the allegation is 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.

These are complainant's second and third judicial misconduct complaints alleging ex parte communication and bias based on disagreements with the merits of rulings and variations in typography and/or clerical errors in orders or memoranda. 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

November 20, 2019

JAN 30 2020

FIFTH CIRCUIT
LYLE W. GAYNE, CLERK

**BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT**

No. 05-20-90018 through 05-20-90019

Petition for Review by [REDACTED]
of the Final Order Filed November 22, 2019,
Dismissing Judicial Misconduct Complaint Against

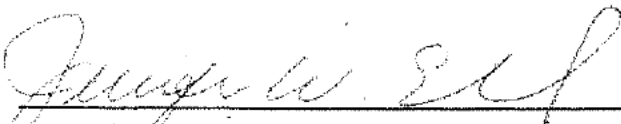
[REDACTED]
Under the Judicial Improvements Act of 2002.

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 Priscilla R. Owen, filed November 22, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED IN ALL RESPECTS.**

1-28-20
Date



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