

FILED

March 12, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90068

MEMORANDUM

Complainant, a state pre-trial detainee, has filed a complaint alleging misconduct by the subject United States District Judge in a 1983 civil proceeding that was terminated in October 1995.

Proceedings prior to March 1991

Complainant complains that the judge improperly dismissed one of the defendants. However, according to the record, that decision was made by the judge to whom the case was originally assigned (i.e., several years before the subject judge took the bench), and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further claims that “[w]hen I asked [the judge] to recuse herself if she couldn’t be fair and impartial, she was angry enough to shoot me with a gun; then told the defendants’ attorneys to go ahead & file their motion for summary judgment.” He also contends that the judge entered the “random, reckless” order granting summary judgment to the defendants because of “racial discrimination [and] because I stood up for what was right for me in my case.”

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 assertions of bias and racial animus 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) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

Allegations -- proceedings on remand (1993 to 1995)

Complainant claims that his court-appointed attorney “was so upset” after attending an in-chambers conference that he “was speech impaired” and “told me he had never encountered anyone so angry, hateful, & prejudice (racist) towards you as [the judge] is towards you & I’m done here, I’m not gonna be able to continue as your attorney should your trial proceed beyond today, I’m sorry; no one has ever talked to me like that before.” Complainant submits that the judge “grossly abused the discretion of the court to bash and verbally abuse [counsel] & exercise her racial bias against [me] because she hated my line of questions which made the defendants lose this case.” He further protests that the judge “threaten[ed] to dismiss my lawsuit . . . if my attorney or I disclosed” to the jury character evidence unfavorable to the defendants.

To the extent, if any, that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, a limited inquiry conducted pursuant to 28 U.S.C. § 352(a)(2) demonstrates that the allegations regarding the judge’s demeanor and statements lack credibility and are therefore subject to dismissal under 28 U.S.C. § 352 (b)(1)(B).

Complainant also claims that the judge “willfully maliciously robbed me of the favorable outcome of my [second] jury trial” when she “stopped [jury] deliberations” and “ordered the jury back in court to hear some extraneous non-party, false [and] uncorroborated testimony [from two Deputy U.S. Marshals] for the purpose[s] of harming my credibility [and] divert[ing] the outcome of the jury votes in favor of the defendants.” He submits that the judge’s conduct constitutes evidence of an “evil, atrocious,

RICO Act violations to successfully, unlawfully, willfully conspire” with the defendants, defense counsel, and the Deputy U.S. Marshals “& their supervisor.”

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 assertions of bias and conspiracy 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) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

In addition, complainant complains that following the jury’s adverse verdict, and despite “[knowing] the law says a judge must have some knowledge of both jury trials (on remand),” the judge asked a fellow judge to “enter the final judgment for her because she had to be somewhere else more important.”

This allegation is 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.

Complainant offers no explanation for his delay in filing a complaint about decisions and conduct that occurred 25-30 years ago and, although a complaint may be filed or identified at any time, such extreme delay undermines the accurate and fair consideration of a complaint. *See* Rule 9, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Further, the relief complainant seeks, i.e., “. . . an order granting [me] leave to file [my] Rule 60(b) F.R.C.P., [my] out of time appeal & an award of original & extra damages for the abuse of official power showing racial bias against [me] . . . ,” is not available under 28 U.S.C. §§ 351-364.

Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint against the judge regarding his 1983 case, 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

March 11, 2021

FILED

April 8, 2021

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

No. 05-21-90068

Petition for Review by [REDACTED] of the Final Order
filed March 12, 2021, 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 March 12, 2021, dismissing the Complaint against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

April 8 2021 Jennifer W. Elrod

Date

Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit