

FILED

February 4, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90037

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in two civil proceedings.

Case A

Complainant protests that even though he explicitly declined to consent to proceed before a magistrate judge, “my non-consent . . . was disregarded.” This assertion is clearly contradicted by the record: all dispositive rulings were entered by the presiding United States District Judge, not by the subject magistrate judge.

A litigant has no right to object to the assignment of nondispositive matters to a magistrate judge under 28 U.S.C. § 636(b). *See Jackson v. Cain*, 864 F.2d 1235, 1247 (5th Cir. 1989). The allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant recounts that during an evidentiary video-hearing, he asked whether there was a conflict of interest in the magistrate judge’s assignment to Case A and to another pending case filed by complainant.¹

¹ Complainant and fifteen other prisoners filed a 42 U.S.C. § 1983 lawsuit. The magistrate judge severed complainant’s co-plaintiffs’ claims into fifteen individual cases. Complainant’s claims were later transferred to another district court.

Complainant claims that, in response to the question, the magistrate judge “hung up, no answer nothing.”

A review of the audio-recording demonstrates that complainant’s recollection is incorrect.² Approximately four minutes before the conclusion of the hearing, complainant remarked that the magistrate judge’s severance of his co-plaintiffs’ claims in the other pending case was “a civil rights violation. . . . I just want to be clarified because I don’t have a lawyer right now so, I’m asking you as a judge, you are a lawyer, to make sure that there is no conflict here with you being on these two cases.” The magistrate judge replied that complainant would have to decide for himself whether there was a conflict of interest. During the remaining minutes of the hearing, complainant asked to “put on the record right now” that, as an indigent litigant, he “qualif[ied] for a complete copy of this hearing at the earliest convenience of the court through this oral motion.” The magistrate judge replied, “You can put that on the record.”

To the extent that complainant is complaining that the magistrate judge declined to answer the question about a conflict of interest, the allegation relates directly to the merits of that decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the record clearly shows that the magistrate judge did not disconnect the video-call in response to being asked whether there was a conflict of interest, and complainant’s contrary assertion is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that “when I attempted to retrieve the footage of the audio/video [of the evidentiary hearing] as support of my asking this judge [about the conflict of interest], I was completely ignored by the clerk and the judge.”

² No official transcript of the hearing was prepared. All quotes herein are an unofficial transcription for the limited purpose of addressing the instant complaint allegations.

To the extent, if any, that this allegation is aimed at the magistrate judge's failure to grant complainant's oral motion for the hearing record, it relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion that the magistrate judge intentionally "ignored" complainant's subsequent written request(s) for a copy of the hearing record is 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."

Case B

Complainant protests that "it's beyond me why the original courts [where] I've filed my claims, why they would transfer my claims to the [relevant district and division] always falling under [the subject magistrate judge's] case load when there's 2 other magistrate judges in this jurisdiction."

Complainant appears to imply that the magistrate judge somehow engineered the assignment of preliminary matters in Case B to himself, rather than to the other magistrate judge in the same division. Such a conclusory assertion lacks sufficient evidence to raise an inference that misconduct has occurred, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that the magistrate judge issued an Order to Answer and Scheduling Order containing "information of wrong attorneys, contact info, and conflicting directory [sic] as to disclosure notice. Etc." However, even if the order contained the purported errors, complainant offers no explanation as to why those errors constitute evidence of judicial misconduct.

To the extent that the allegation relates to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any conclusory assertion of improper

motive 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) 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 R. Owen
Chief United States Circuit Judge

February 2, 2022

FILED

May 20, 2022

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-22-90037

Petition for Review by [REDACTED]
of the Final Order Filed February 4, 2022,
dismissing the 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 February 4, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

May 14, 2022
Date

Jennifer W. Elrod
Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit