

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JUN 06 2016

Docket Number: 05-16-90077

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge who presided over his criminal trial.

Complainant alleges that the judge improperly denied an initial budget submitted by defense counsel appointed to represent complainant post-conviction through sentencing, and demonstrated bias in instructing counsel to confine his representation to assisting complainant through sentencing.

These allegations were raised and dismissed in a prior complaint, and are therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the judge acted improperly by communicating “off the record” with defense counsel about the budget, and complains that neither the budget nor the judge’s order approving it appears in the record. However, §§ 640.20(b) and (c) of the Guide to Judiciary Policy, Vol. 7, provide that “case budgets should be submitted *ex parte* and filed and maintained under seal” and “consideration should be given to employing an *ex parte* pretrial conference to facilitate reaching agreement on a litigation budget at the earlier opportunity.” As such, it was entirely proper for the judge to communicate directly, or via his law clerk, to defense counsel that he would not approve an initial budget as submitted, and to file the budget and associated orders under seal.

Complainant also asserts that the judge instructed defense counsel to “not respond to any of my *pro se* motions.” This allegation is contradicted by the docket which records that complainant’s *pro se* motions were forwarded to defense counsel “so that he may review [them] and—if necessary and appropriate—take further action”, i.e., adopt or refile the motions.

These allegations are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant alleges that the judge is “purposely keeping things from becoming part of the record, sabotaging my case.” He refers to the following examples:

- A subpoena instructed a sheriff’s officer to appear for a hearing in April 2014 and to produce copies of recordings of telephone conversations between a jail inmate and a key witness in complainant’s trial, the officer provided the copies of the recordings in February 2014, and no hearing was held. Complainant protests “there is nothing mentioned on record as to why [the hearing] didn’t happen”, and the officer later told complainant that “a court official contacted him and told him to send him emails of the phone records electronically instead of on record with the courts. The court is pulling strings off record to dictate this case.”
- Complainant sent a copy of the recordings to the district court with a motion asking that the recordings be transcribed by a court reporter. The docket records receipt of the CD, and notice to complainant that the motion was deficient. He refiled the motion. In opposing the motion, the government stated, “It is unclear who presently has custody of the recordings, or if they still exist.” Based on that statement, complainant concludes that the judge has concealed the existence of the CD.

None of the conduct described is evidence of judicial misconduct, and the allegations 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.

 2016


Carl E. Stewart
Chief Judge

U. S. COURT OF APPEALS
FILED

AUG 23 2016

**FIFTH CIRCUIT
LYLE W. GAYCE, CLERK**

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90077
Petition for Review by [REDACTED]
of the Final Order Filed June 6, 2016
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 June 6, 2016, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

8-16-2016
Date

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

U. S. COURT OF APPEALS
FILED

OCT 17 2016

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90077
Supplemental Petition for Review by [REDACTED],
of the Final Order Filed June 6, 2016
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 supplemental petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed June 6, 2016, dismissing the Complaint of [REDACTED] against [REDACTED], under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

10-9-2016
Date


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