

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
NOV 02 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-16-90128 and 05-16-90129

MEMORANDUM

Complainants, husband and wife *pro se* litigants, have filed a convoluted judicial misconduct complaint against the subject United States District Judge and the subject United States Magistrate Judge regarding a pending civil rights proceeding.

Complainants complain that the magistrate judge and defense counsel for the County have engaged in “*ex parte* collusion ... to plan and issue illegal court orders against [us] ... falsifying of docket entries by [the magistrate judge] and/or his office staff thus him for [the County/defense counsel], to justify an illegal order ... against us for County.” They contend that the magistrate judge and defense counsel conspired to ensure that “[our] case would/could be dismissed or whatever else by way of orders issued by [the magistrate judge]” for failure to timely file a response to the County’s motion for a more definite statement. They further allege that Docket Entry #24 was “falsified to justify” the magistrate judge’s (erroneous) order finding their motion was moot, and they submit that after they wrote again to the clerk to “expose the fraud”, “in a clear panic” the magistrate judge vacated the erroneous order but “employed very deceptive ambiguous obfuscation [to avoid] specifically naming [motions] or ... the County.”

An analysis of the relevant docket entries, orders, and motion indicates simple human error in the clerk’s docketing, inadvertent errors in the magistrate judge’s order relying on that docketing and the County’s motion relying on that order, and attempts by the magistrate judge and the clerk to rectify those errors. The record does not support the elaborate conspiracy advanced by the complainants.

Complainants also allege that the magistrate judge and defense counsel “conspired together on an unbelievable barrage of filings and responses ... attempting to help [defense

counsel] have immunity approved for County ... which resulted in stay of case by [the magistrate judge].” In addition, they assert that the magistrate judge “order[ed] immunity for County and dismiss[ed] our complaint based on state law immunity.” A review of the docket shows that the vast majority of the County’s filings are responses to complainant’s copious motions, and there is no evidence that any motions addressing the defense of immunity were filed as part of a conspiracy with the magistrate judge. The record also shows that the magistrate judge did not “stay” the case rather, pursuant to the district court’s Local Uniform Rules of Civil Procedure, he stayed discovery until after the issue of immunity was considered by the district court.

To the extent that these allegations relate directly to the merits of the magistrate judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias and conspiracy are patently frivolous or are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainants allege that the judge lacked jurisdiction to rule on their motion for default judgment, and that this “improper order ... signif[ied] obvious retroactive agreement to collusion with [the magistrate judge and defense counsel] to aid [them] by eliminating [the motion] as a threat to [defense counsel’s] defaulted defense.” In the alternative, they allege that if the motion was within the court’s jurisdiction, then [the magistrate judge] “violat[ed] the rules of court by not answering motions in chronological order.”

Complainants further allege that the judge “colluded with [defense counsel] ... while our case was improperly stayed by [the magistrate judge].” Without any evidence to support the contention, they surmise that the County “possibly” filed the amended motion “on the same subject matter ... at the exact moment or maybe even before” the judge issued the order “to without doubt take quick advantage of what [the judge] filed ... regardless of the subject matter,” thereby “prov[ing] that there was ex parte communication between [them] to coordinate filings.” Complainants further assert that the judge’s order and the County’s amended motion “were filed in desperation while case [sic] was stayed to protect [defense counsel] from herself, i.e. her own incompetent filings.”


To the extent that these allegations relate directly to the merits of the judge's and the magistrate judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of conspiracy and *ex parte* communication are either frivolous or are insufficient to support a finding of judicial misconduct, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainants note that the judge's June 2015 order dealt with nine motions "which had accumulated over about a year's span," and the March 2016 order dealt with motions "filed over about 8 month's [sic] time." The undersigned construes these statements as allegations of undue delay.

To the extent that complainants are alleging delay of up to a year in ruling on motions, the docket indicates that motions addressed in the June 2015 order were filed between two weeks and eight months prior, and the motions ruled on in the March 2016 order were filed between four months and nine months prior. As provided by Rule 3(h)(3)(B) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about mere delay is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). Even if complainants' references to delays in ruling are construed as implying deliberate delay, such conclusory assertions are insufficient to support a finding of judicial misconduct, and are therefore also 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.


Carl E. Stewart
Chief Judge

September 12, 2016

U. S. COURT OF APPEALS
FILED

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90128 through 05-16-90129
Petition for Review by [REDACTED]
of the Final Order Filed November 2, 2016
Dismissing Judicial Misconduct Complaint Against
[REDACTED] and
[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 November 2, 2016, dismissing the Complaint of [REDACTED] against [REDACTED] and [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

12-22-2016
Date

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