

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**  
DEC 12 2016  
FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Complaint Numbers: 05-16-90135 through 05-16-90140

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MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject (former) United States Circuit Judge, three subject United States District Judges, and two subject United States Magistrate Judges. Complainant alleges that these judicial officers have participated in a vast conspiracy with his state criminal trial counsel, counsel's law firm, various "alter egos" of that law firm (e.g., a legal defense fund and a law school), a state district attorney, and the "National College of District Attorneys." He claims that the misconduct occurred in eleven district court cases and one appeal.

A review of those cases shows that between 1991 and 1994, complainant accrued three strikes under 28 U.S.C. § 1915(g) for filing frivolous lawsuits. In the third case, he was fined \$120 and was barred from filing any action until the sanction was paid or he was granted permission to file by a district judge or a circuit judge. In 1995, a Fifth Circuit panel, including the subject circuit judge, affirmed the sanction imposed by the district court. The panel imposed additional sanctions including, until further order of the Fifth Circuit, barring complainant from filing any civil rights action or appeal in the federal courts of the Fifth Circuit without receiving prior permission of an active judge of the forum court.

In the intervening decades, based on those sanctions, some of the subject judicial officers dismissed complainant's district court lawsuits. The crux of complainant's judicial misconduct complaint appears to be the chilling effect those sanctions have had

on his ability to prove his innocence of the criminal conviction for which he is serving a 99-year sentence.

Complainant alleges, with little specificity as to judicial officer or case, the following misconduct:

- imposition of “unappealable” sanctions which “were obtained in violation of § 47, §144, § 455 all nullities to cause undue delay”, and have deprived him of right to due process (e.g., “no trials, no discovery, no hearings”);
- because of the sanctions, for more than two decades the judges and magistrate judges have failed to consider the merits of complainant’s legal arguments, and this “cover up” is a “diversionary tactic” that has damaged his ability to prove his innocence, (e.g., “witnesses forget, exculpatory information disappears, witnesses die”);
- the judicial officers improperly and prejudicially held that complainant is a vexatious litigant and/or his lawsuits are frivolous;
- “every one of my suits have demand for disclosures ignored”;
- RICO violations;
- “obstructions of justice, dismissed without prejudice to exhaust is not on the merits nor is alleged untimely”;
- “a systematic scheme of fraud upon the court by the court”;
- “abuses of discretion that are criminal”;
- “conflicts of interest”, including failure to recuse; and,
- “failure to set [me] free ... through fraud corruption post-conviction cover up.”

The circuit judge retired from the office pursuant to 28 U.S.C. § 371(a), and is no longer an Article III judge. A judge’s resignation from office renders that judge “no longer subject to the disciplinary procedures of Section 372(c) [now 28 U.S.C. § 351 et seq.] and the remedies they prescribe.” In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9<sup>th</sup> Cir. Judicial Council 1996); In re Complaint of Judicial Misconduct, 10 F.3d 99, 100 (3<sup>rd</sup> Cir. Judicial Council 1994) (“In effect, the retirement of a judge moots the

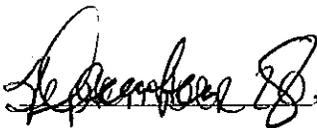
complaint because there is no effective remedy under the statute.”). The judge’s resignation is an intervening event that makes action on the complaint unnecessary, and the complaint against him is therefore concluded pursuant to 28 U.S.C. § 352(b)(2).

To the extent that complainant is repeating allegations made, and dismissed, in a prior complaint, the allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent the allegations relate directly to the merits of the judges’ and the magistrate judges’ decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of conspiracy are insufficient to support a finding of judicial misconduct, and 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.

This is complainant’s third judicial misconduct complaint, and he has been warned previously against filing further merits-related and/or frivolous complaints. Additionally, the filing of repetitive allegations constitutes an abuse of the complaint process. Complainant’s right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why his right to file further complaints should not be so limited.

An order dismissing the complaint is entered simultaneously herewith.

 2016

  
Carl E. Stewart  
Chief Judge