

JAN 12 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-16-90141 and 05-16-90142

REVISED MEMORANDUM

The order entered October 19, 2016 dismissing the above-referenced judicial misconduct complaint is vacated, and is replaced by this revised order.

Complainant, a *pro se* litigant, has filed a judicial misconduct complaint against the subject United States Magistrate Judge and the subject (former) United States District Judge.

Complainant complains that the magistrate judge should have recused himself *sua sponte* because of professional relationships with the defendant university and with an attorney who works for the defense law firm. In support of this claim, complainant cites the magistrate judge's 2010-2014 financial disclosure reports listing "adjunct lecturer" and "moot court advisor" positions at the defendant university's law school, and a www.linkedin.com profile stating that the magistrate judge was an "adjunct professor" at the law school. He protests that the magistrate judge failed to disclose these relationships and, in an attempt "to avoid recusal and to mislead the public" after complainant filed a motion to recuse, the magistrate judge amended his www.linkedin.com profile to reflect that his role as "adjunct professor" ended several years before complainant filed the lawsuit.

Following a limited inquiry conducted pursuant to 28 U.S.C. 352(a)(2), the undersigned concludes that the magistrate judge's financial disclosure reports accurately reflected his role as an adjunct "lecturer"—as distinct from his former role as an adjunct "professor"—at the law school. There was nothing misleading in the magistrate judge's correcting an outdated www.linkedin.com profile that erroneously listed his ongoing role as adjunct professor rather than as adjunct lecturer.

Complainant further alleges that the magistrate judge entered orders and amended docket entries to intentionally advantage the defendants. In support of this claim, complainant explains that he filed a motion asking the court to construe a prior motion as both a response to the defendants' motions for summary judgment and as complainant's motion for summary judgment. The magistrate judge entered an order stating that complainant's motion was granted, but construing the prior motion only as a response to the defendants' motions for summary judgment. In accordance with the magistrate judge's decision, the clerk then amended the docket entry for the prior motion.

Rather than interpreting the decision as mere error, complainant proposes that the magistrate judge "eliminated" his motion for summary judgment, and "did so as to give his employer a legal advantage. ... The Plan was to have [the defendant university] lay low until an adverse [sic] decision was rendered in their favor." Despite the docketing of a lengthy text order recording the magistrate judge's decision, complainant also objects that he was not "adequately inform[ed]" of this "clandestine and stealthy" decision."

Complainant provides numerous other examples of the magistrate judge's alleged bias towards the defendants including: denying complainant's motions alerting the court to the defendants' filing of "falsified documents" and fraudulent claims; and, "to avoid imminent default judgment," granting "in less than six hours" the defendant university's motion for an extension of time to file an answer to complainant's third amended complaint.

Complainant cites portions of the magistrate judge's orders containing language and recitations of fact that mirrored closely statements in defense pleadings. He alleges that, based on his own "familiar[ity] with the handwriting, verbiage, and subtle nuisances [sic] of Defense Counsel," it is apparent that the orders "were drafted by Defense counsels with nothing left [the magistrate judge] to do but add his signature."

In addition, complainant protests that the magistrate judge "advanced a legal argument in favor of Defendants that were [sic] not supported with facts in the record and not even advanced by Defendants themselves," and this is evidence of the magistrate judge's incompetence or partiality towards the defendants.


To the extent that these allegations relate directly to the merits of the magistrate judge's decisions, including the decision not to recuse *sua sponte*, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging that the magistrate judge changed his www.linkedin.com profile "to avoid recusal and to mislead the public," the allegations are refuted by objective evidence and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(B). In other respects, such conclusory assertions that the magistrate judge's rulings in favor of the defendants demonstrate either incompetence or bias 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).

The subject United States District Judge retired from the office pursuant to 28 U.S.C. § 371(a), and is no longer an Article III judge. A judge's retirement 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 (9th Cir. Judicial Council 1996); In re Complaint of Judicial Misconduct, 10 F.3d 99, 100 (3rd 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 retirement 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).

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.

January 11, 2017


Carl E. Stewart
Chief Judge

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90141 and 05-16-90142
Petition for Review by [REDACTED]
of the Final Order Filed January 12, 2017
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 January 12, 2017, dismissing the Complaint of [REDACTED], against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

March 2, 2017
Date

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