

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**

AUG 09 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Complaint Numbers: 05-17-90044 through 05-17-90046

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MEMORANDUM

Complainant, a pro se litigant, has filed a judicial misconduct complaint against United States District Judges A and B and United States Magistrate Judge C. Judge B and Magistrate Judge C were assigned to complainant's civil case. When complainant filed a motion to recuse Judge B, Judge B transferred it to Judge A, who denied it.

First, complainant complains that the judges have a conflict of interest in presiding over his case, because they were appointed by former President X, who complainant claims is "directly involved" in the case. Complainant also complains that Judge B assigned the case to Magistrate Judge C. To the extent these allegations are a complaint about Judge A's decision to deny the motion to recuse Judge B, and all of the judges' decisions not to recuse sua sponte, the allegations relate directly to the merits of the judges' decisions, and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). As to Judge A and Magistrate Judge C, the allegations are also frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) because those judges were not appointed by former President X. *See* 28 U.S.C. § 631 (providing that magistrate judges be appointed by the judges of the district court).

To the extent the allegations are a complaint about Judge B's order referring the case to Magistrate Judge C, the allegations are directly related to the merits of a procedural ruling and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). They are also frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* 28 U.S.C. § 636(b)(1) (providing that a district judge may designate matters to a magistrate judge).

Complainant next complains that the judges “conspired to exclude” complainant from a hearing in his case in “an intentional act of favoritism by this court for the political Defendants,” because Magistrate Judge C scheduled a hearing and then denied complainant’s motion to reschedule the hearing. To the extent complainant is complaining about Magistrate Judge C’s orders setting the hearing and denying the motion to reschedule, the allegations are directly related to the merits of procedural rulings and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). As to Judges A and B, who were not involved in the scheduling of the hearing, the allegations are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant next alleges that after defendants came to court unprepared for the hearing, Magistrate Judge C allowed them to adjourn with their attorneys “to the foyer of the courthouse to formulate an emergency plan that actually included appearing in court for this scheduled hearing,” causing the hearing to be delayed by fifteen minutes. Complainant alleges that was part of a conspiracy “by this partisan [President X] court . . . to make [complainant] the absent litigant from this very hearing to secure a slam-dunk judgment against him for these political Defendants.” As to Magistrate Judge C, the allegation that he allowed defendants to confer before starting the hearing lacks sufficient evidence to support an inference that misconduct has occurred, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). As to Judges A and B, who were not involved in the hearing, the allegations are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant next alleges that during the “emergency meeting” of the defendants and their attorneys before the hearing, Magistrate Judge C and counsel for one of the defendants participated in an ex parte meeting that was “extremely prejudicial, unacceptable, and highly unethical.” A limited inquiry into the alleged ex parte meeting under 28 U.S.C. § 352(a) demonstrates that the allegations in the complaint lack factual foundation and are conclusively refuted by objective evidence. As to Magistrate Judge C, these allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(B). As to

Judges A and B, who were not alleged to be involved in the meeting, the allegations are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges that the court never addressed a “motion for mistrial and sanctions” that he purportedly filed in response to the alleged ex parte meeting. He has attached two documents as exhibits to the complaint. The former appears to be his objections to Magistrate Judge C’s report and recommendation, which were considered by Judge B in his order dismissing the case. The latter appears never to have been filed. These allegations are therefore frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant next alleges that the “Final Judgment issued by this [President X] court blindsides Plaintiff with a condemning conclusion concerning Plaintiff’s, ‘*conduct in this case.*’”<sup>1</sup> Complainant “take[s] issue with the corrupt method used by this court to arrive at this baseless conclusion which omits the entire process in place to formulate such a conclusion in a court of law.” Complainant’s allegations about the language in Magistrate Judge C’s report and recommendation are directly related to the merits of his decision and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). The allegations against Judge B, who accepted and adopted the report and recommendation, are likewise directly related to the merits of his decision and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). As to Judge A, who did not draft or adopt the report and recommendation, the allegations are frivolous and subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant alleges that the “[President X] Judges” “dismissed” various pieces of “hard evidence” which supported his case. These allegations relate directly to the merits of the judges’ decisions, and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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.

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<sup>1</sup> The complaint refers to the “Final Judgment,” but in context it is clear that complainant is referring to Magistrate Judge C’s report and recommendation.

An order dismissing the complaint is entered simultaneously herewith.

  
Carl E. Stewart  
Chief Judge

July 29, 2017

U. S. COURT OF APPEALS  
**FILED**

OCT 10 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-17-90044 through 05-17-90046  
Petition for Review by [REDACTED]  
of the Final Order Filed August 9, 2017  
Dismissing Judicial Misconduct Complaint Against  
[REDACTED]

Under the Judicial Improvements Act of 2002.

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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 August 9, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

October 3, 2017  
Date

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