

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

**FILED**

JAN 10 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-18-90039

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MEMORANDUM

Complainant, a federal prisoner, complains that the subject United States District Judge intentionally and unduly delayed ruling on an October 2015 motion to recuse and a February 2017 Rule 59(e) motion filed in Case A. The undersigned notes that the judge entered an order denying the two motions in February 2018.

A review of the docket indicates that there is no evidence that the delay in ruling on the motions was due to lack of diligence, let alone bias against complainant, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further submits that the judge lacked jurisdiction to enter rulings while the recusal motion was pending, and protests that the judge improperly terminated, without notice, a December 2015 Rule 59(e) motion. He also contends that the lack of notice violated his due process rights by “effectively barring or prohibiting [me] from appealing the termination.”

Regarding the allegation that the judge lacked jurisdiction to enter rulings in Case A while the recusal motion was pending, a review of the docket shows that the judge’s first ruling after the October 2015 recusal motion was filed was the February 2018 order denying that motion. To the extent that complainant is alleging that the judge lacked jurisdiction to authorize the administrative termination of the December 2015 motion as duplicative of an identical motion filed in Case B, and intentionally did so without notice, complainant provides no support for the contention that the decision was intentionally aimed at depriving him of his due process rights.

To the extent that these allegations relate directly to the merits of the judge’s decision to exercise jurisdiction, they are subject to dismissal under 28 U.S.C. §

352(b)(1)(A)(ii). In other respects, the such conclusory assertions of improper motive 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).

In addition, complainant complains that the judge repeatedly “refused to adjudicate the merits” of his claim that the Assistant United States Attorney who prosecuted his criminal case perpetrated “fraud upon the court” because she “was NOT a duly appointed or authorized attorney for the government.”

The allegation relates directly to the merits of the judge’s rulings, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant protests that the judge’s February 2018 order was “bas[ed] ... on facts or circumstances that do not exist and/or have never been presented.” For example, he alleges that the judge’s finding that the recusal motion was untimely filed was “incorrect,” and complains that the judge failed to “adjudicate the actual merits in [my] Motion to Recuse.” He further asserts that the judge erroneously denied the February 2017 motion based, complainant surmises, on either the clerk’s or the court’s erroneous or intentional docketing of the October 2015 Rule 59(e) motion in Case B (but which was captioned for filing in Case A), thereby leading to the court’s erroneous or contrived determination that the identical Rule 59(e) motion docketed in December 2015 in Case A should be terminated as duplicative. Complainant contends that the judge’s “incorrect/incomplete statements” are intended to mislead the United States Court of Appeals for the Fifth Circuit.

To the extent that these allegations relate directly to the merits of the judge’s decision, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias and improper motive 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).

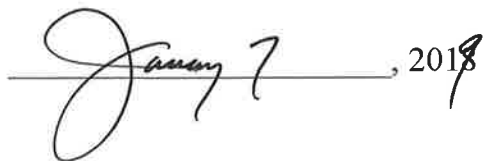
Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

Complainant asks the undersigned to transfer his consolidated complaint to another circuit for consideration. Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that a chief judge may ask the Chief Justice to transfer a complaint proceeding to the judicial council of another circuit. The Commentary on Rule 26 explains that transfer may be appropriate, for example, in the case of a serious complaint where there are multiple disqualifications among the original judicial council, where the issues are highly visible and a local disposition may weaken public confidence in the process, where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate, or where a complaint calls into question policies or governance of the home court of appeals.

The undersigned finds that none of these exceptional circumstances arise out of the instant complaint, and complainant provides no other argument in support of transfer. The request is denied.

To the extent that complainant also asks the undersigned to order the subject judge to recuse himself, and to order that complainant's district court proceedings be transferred to another court, such relief is not available under the judicial misconduct complaint procedure. The requests are denied.

An order dismissing the complaint is entered simultaneously herewith.

 January 7, 2018

  
Carl E. Stewart  
Chief Judge

FEB 28 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-18-90039

Petition for Review by [REDACTED],  
of the Final Order Filed January 10, 2019,  
Dismissing Judicial Misconduct Complaint  
Against [REDACTED]  
Under the Judicial Improvements Act of 2002.

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ORDER

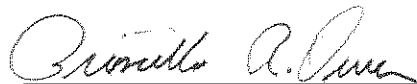
An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Carl E. Stewart, filed January 10, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

Date

2-22-2019



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