

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
SEP 07 2010
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-18-90100 through 05-18-90115

MEMORANDUM

Complainant 1, a state prisoner, has filed a judicial misconduct complaint, including four supplements, against District Judges A, B, and C, Magistrate Judges D and E, and Circuit Judges F, G, H, I, J, K, L, M, N, O, and P.

Complainant 1 has also orchestrated the filing of judicial misconduct complaints by three other inmates. Complainant 2 “adopts, and incorporates the entire factual allegations of the four [Complainant 1] complaints,” and asks the court to address them as to Complainant 2 because he “falls squarely under the umbrella of grave injustice” described by Complainant 1 in his complaints. Complainant 3 complains that “[a] dozen district and appellate judges are conspiring to severly (sic) abuse and preclude justice for [Complainant 1] through judicial process” and requests that “the judicial abuse” of Complainant 1 “be stopped.” Complainant 4 “adopts the allegation’s (sic) in full of those four [Complainant 1] complaints against [District Judge A, Magistrate Judge E, and Circuit Judges F, G, H, I, J, K, L, M, O, and P].”

Because the complaints of Complainants 2, 3, and 4 do not differ in substance from Complainant 1’s complaint, all four complaints were handled in the same order. References to Complainant 1’s complaints and allegations are inclusive of the allegations made by Complainants 2, 3, and 4.

I. General Allegations

Although the complaint and supplements total over 40 pages and include a range of specific allegations, Complainant 1’s primary assertions are that all of the judges in the Fifth Circuit are in a conspiracy against pro se inmates who have sued over unlawful prison

conditions, and that the decisions made in Complainant 1's cases reflect this bias and conspiracy. He complains that the federal judges, using "their self proclaimed 'descretion' (sic)," and "acting under the allowance and guidance of the Chief Judge of this Circuit," have been "unjustly" deciding against inmates without considering the facts or arguments and by creating "unjust procedural barriers to stop the cases." He also complains that the judges "refuse to appoint counsel to inmates whom they know are unable to proceed adequately in court so as to ensure the failure of the case."

Complainant 1 further asserts that the judges "sit on motions and cases for excessively long periods of time atypical to the normal case, before rendering decisions." He contends that the judges "without justification have continually and repeatedly decided against the inmate at every turn on virtually every issue, while long belying decisions," in his own cases and in the cases of "multiple fellow inmates" whom he "has assisted." In the third supplement to his complaint, Complainant 1 explains his theory that judges create "negative and positive common law" by making decisions in cases, and then "misuse it with purpose of hindering or precluding justice in an unrelated future case." He also complains that the judges "intentionally ignore and do not consider relevant facts alleged by the inmates" in deciding cases.

As to District Judges B and C and Circuit Judge P, retired judges are not subject to the Judicial Improvements Act. *See* 28 U.S.C. § 351(d)(1) and Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant 1's complaints as to those judges are therefore concluded under 28 U.S.C. § 352(b)(2).

As to the remaining judicial officers named in the complaints, to the extent Complainant 1's allegations relate directly to the merits of the judges' and the magistrate judges' decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, conclusory assertions of bias and conspiracy 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).

II. Allegations Against Particular Judges

Complainant 1 makes several complaints regarding particular judges. He asserts that Circuit Judge F is “directing or allowing” the judicial bias against pro se inmates and that he “protected” District Judge C and Magistrate Judge E in dismissing Complainant 1’s earlier complaints against them. Complainant 1 offers no support for the former allegation, and it is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). The latter allegation directly relates to the merits of Circuit Judge F’s decisions on misconduct complaints, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant 1 complains that Magistrate Judge E cut him off at a hearing and implies without support that she had a transcript of the hearing removed from the docket. In *Liteky v. U.S.*, 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court recognized that a “judge’s ordinary efforts at courtroom administration” do not establish bias. The allegations 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).

Complainant 1 also complains about Magistrate Judge E’s recommendation to dismiss one of his cases under Rule 41(a)(1) rather than Rule 41(a)(2), and “destroyed practically all of the claims” in another of his cases. The allegations directly relate to the merits of the magistrate judge’s decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant specifically complains that District Judge A “is maliciously (sic) and prejudicially (sic) refusing to provide de novo review to the issue in [Complainant 1’s case] without justification,” which is why Complainant 1 has sought mandamus relief. The docket in the case is a tangled mass of motions, advisories to the court, notices to the court, declarations, and objections filed by Complainant 1, many of which have titles that do not accurately reflect their contents. In this context, conclusory assertions that District Judge A is refusing to provide the review required by him as a district judge 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).

Complainant 1 also complains that Magistrate Judge D and District Judge A “destroyed” another of Complainant 1’s cases “without justification” through the order dismissing the case. The allegation directly relates to the merits of the magistrate judge’s and the judge’s decisions, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant 1 complains about Circuit Judge L’s “rubber stamp” decision to deny him leave to appeal in forma pauperis in one of Complainant 1’s appeals, calling it “another clear example of the unjust automatic motions denials practice against inmates.” The allegation directly relates to the merits of the judge’s decision, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant 1 complains about the opinions of the court in two of his appeals, asserting that the opinion of Circuit Judges I, M, and O in one case had an erroneous basis and that the opinion of Circuit Judges G, I, and N in another case further delayed “the action.” The allegations directly relate to the merits of judicial decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

III. Allegations Regarding Delay

Complainant 1 complains that the circuit judges and district judges are “unduely (sic) long belaying (sic) the Courts decisions on their pleadings,” claiming that “[a] typical non inmate civil lawsuit is adjudicated through the finalization of trial within a three to four year period,” but inmate pro se cases are “dragg[ed] out . . . much longer than that, for purpose of hindering and precluding ultimate relief for the inmate.” In support of his allegations, Complainant 1 points to three of his district court cases and Complainant 4’s district court case. He also points to four of his appeals and one of Complainant 4’s appeals.

A review of the dockets in each of the district court cases shows Complainant 1 (and to a somewhat lesser extent, Complainant 4) inundating the district court with lengthy motions, advisories to the court, notices to the court, declarations, and objections, many of which repeatedly seek relief which has already been denied. A review of the appeals shows time from appeal to judgment ranging from five months to seventeen months.

Pursuant to Rule 3(h)(3)(B) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable

misconduct “unless the allegation concerns an improper motive or habitual delay.” In the cases referenced in the complaint, any delay appears to have been attributable, at least in part, to the filing of copious motions and other substantive documents. The undersigned finds no evidence of habitual delay, and Complainant 1’s conclusory assertion that the judges have intentionally delayed ruling in the proceedings is insufficient to support a finding of judicial misconduct and the allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant 1 also complains that the Fifth Circuit and the district court provide indigent inmates “with only one single copy of any Order or decision rendered by the Court in their case.” He asks that the courts be made to provide more than one copy and that the Fifth Circuit not require indigent inmates to submit a copy of district court orders with their appeals. A complaint about court rules and policies governing how many copies are provided and what is required to file an appeal concerns an administrative rather than a judicial function. While administrative decisions may involve misconduct, Complainant 1 must allege more than disagreement with a court’s or individual judge’s policy decision that only a certain number of copies are to be provided at no charge. Complainant 1’s claims as to the copies provided to indigent inmates 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 the second supplement to his complaint, Complainant 1 alleges that the sixteen subject judges “may well be involved” in “an exceptionally well organized and well hidden scheme whereby tens of billions of taxpayer dollars are being criminally embezzled from the United States federal government by and through a conspiracy” related to the American Correctional Association’s accreditation of the prison in which Complainant 1 resides. The allegation lacks sufficient evidence to raise an inference that misconduct has occurred and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

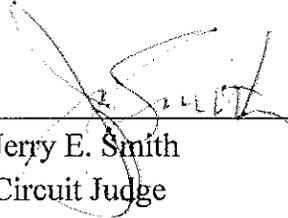
Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

This is Complainant 1’s third merits-related and conclusory complaint, and he has been warned previously against filing further merits-related or frivolous complaints. Complainant 1’s right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules for Judicial-

Conduct and Judicial-Disability Proceedings. Complainant 1 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.

Additionally, because the complaints filed by Complainants B, C and D appear to be part of an orchestrated campaign, pursuant to Rule 10(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, I recommend that the judicial council issue an order instructing the clerk to refuse to accept additional orchestrated complaints.

An order dismissing the complaints is entered simultaneously herewith.



Jerry E. Smith
Circuit Judge

September 4, 2018

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THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Before: SMITH, HAYNES, HIGGINSON, BARBIER, DICK, HICKS, BROWN,
OZERDEN, GODBEY, ROSENTHAL, GILSTRAP, and MARTINEZ¹

DOCKET NOS. 05-18-90100 through 05-18-90115

IN RE: Orchestrated Complaints of Judicial Misconduct, Under the Judicial
Improvements Act of 2002

ORDER AND MEMORANDUM OF REASONS

A state prisoner filed a judicial misconduct complaint against sixteen judges and
former judges in the Fifth Circuit: [REDACTED]

[REDACTED]

[REDACTED]. The
prisoner also orchestrated the filing of judicial misconduct complaints against the same
judges by three other state prisoners. The allegations of the latter three did not differ
in substance from the allegations of the first. All four complaints were dismissed by
Judge Jerry E. Smith, who, as the most senior judge not named in the complaints acted
for the Chief Judge, in an order signed on September 4, 2018 and filed on September
7, 2018. Pursuant to Rule 10(b) of the Rules for Judicial-Conduct and Judicial-
Disability Proceedings, Judge Smith recommended that the judicial council issue a
written order instructing the circuit clerk not to accept for filing any additional
complaints raising substantially the same allegations.

¹ Chief Judge Stewart and Circuit Judges Owen, Jones, Dennis, Elrod, Southwick and
Graves stood recused and did not participate in this Judicial Council Action.

After Judge Smith's order was filed, another state prisoner submitted a fifth orchestrated complaint of misconduct against twelve of the same judges complained against by the first four prisoner-complainants and making substantially the same allegations.

Pursuant to Rule 10(b), the clerk is directed to refuse to accept any complaints received after September 7, 2018 against one or more of the sixteen judges named in the prisoner-complainants' complaints, where the allegations of the complaint have already been disposed of by Judge Smith's order. The circuit clerk is further directed to send a copy of this order and of Judge Smith's order dismissing the complaints, appropriately redacted, to anyone whose complaint is not accepted.

For the Council:

Date: 11-28-18



JERRY E. SMITH
Circuit Judge