

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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

FEB 06 2019

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Docket Numbers: 05-19-90052 and 05-19-90053

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FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the two subject United States Circuit Judges.

Background

In July 2016, the Clerk received from complainant a document captioned for filing as a 42 U.S.C. § 1983 complaint, but which also included allegations of judicial misconduct against a United States District Judge and a United States Magistrate Judge. The Clerk wrote asking complainant to clarify what relief he was seeking, and explicitly instructed him to complete and return a complaint form if he intended the document to be filed as a judicial misconduct complaint. Complainant completed and returned the form and an additional statement of facts in which he “moved for judicial misconduct” against both subject judicial officers.

In accordance with Rules 8(a) and 8(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Clerk then assigned docket numbers according to the uniform scheme promulgated by the Committee on Judicial Conduct and Disability, notified complainant that his complaint had been filed, and transmitted a copy of the complaint to Judge A and to each subject judicial officer. In January 2017, Judge A entered an order pursuant to Rule 11 dismissing complainant’s complaint.

As provided by Rule 18, complainant then filed a “Petition for Review of [Judge A] Disposition” which the Clerk transmitted to an Appellate Review Panel of

the Judicial Council for the Fifth Circuit for consideration. The panel members voted unanimously to affirm the dismissal order and Judge B entered a corresponding order on behalf of the Judicial Council. The Clerk transmitted a copy of that order to complainant and, as provided by Rule 19(e), notified him that the law provides for no further review of an unfavorable unanimous decision. The complaint matter was closed.

### Allegations

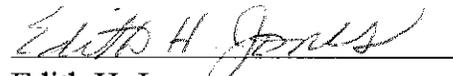
Complainant asserts that because his July 2016 submission “was constructed as a 42 USC 1983,” Judge A erroneously and improperly construed the document as a judicial misconduct complaint filed under 28 U.S.C. §§ 351-364. He further posits, erroneously, that because the docket numbers assigned to the matter were “civil action numbers ... issued by the Judicial Council,” Judge A should have transmitted the matter “to the District Court for prosecution.”

Complainant states that while the complaint was pending, he wrote asking Judge A to order the district court to refund the filing fees complainant alleged the district judge and the magistrate judge had “fraudulently withdrawn” from his inmate trust account. He complains that “[a]t this point [Judge A] could have dismiss[ed] the case” but, instead, the judge “obstructed justice” by continuing to “improperly consider” the “civil actions” as a judicial misconduct complaint. Complainant objects further that despite alerting Judge A to the misconduct in the district court, the judge erroneously and improperly dismissed the allegations.

Complainant submits that “if [Judge A] consider[ed] the complaint had no merit, why was a Judicial Council called into question” and he alleges that Judge B improperly entered an order on behalf of the Judicial Council. He concludes that Judge A and Judge B “conspired ... to vacate the Council finding ... committed contempt, obstructed just[ice] ... committed tort. Three felony [sic].”

To the extent that the allegations relate directly to the merits of Judge A's dismissal of complainant's judicial misconduct allegations against the district judge and the magistrate judge, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of improper conduct, conspiracy, contempt, and obstruction of justice are either demonstrably frivolous or insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

  
Edith H. Jones  
Circuit Judge

Feb. 5, 2019

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FIFTH CIRCUIT  
LYLE W. GAYGE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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Complaint Nos. 05-19-90052 and 05-19-90053

Petition for Review by [REDACTED]  
of the Final Order Filed February 6, 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 Circuit Judge Edith H. Jones, filed February 6, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

4-10-19  
Date

  
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Jerry E. Smith  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit