

JUN 27 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-19-90088 and 05-19-90089

MEMORANDUM

Complainant, a *pro se* litigant, has filed a convoluted and barely intelligible judicial misconduct complaint against the subject United States District Judge and the subject United States Magistrate Judge.

Request to transfer complaint to another Circuit

Complainant asserts that her complaint might “appropriately be transferred unto a Judicial Council of another Circuit” for consideration because unnamed circuit judges in unspecified appeals allegedly “conspired with” the subject judicial officers “to obstruct the due-fair administration of justice.” Rule 26 of the Rules For Judicial-Conduct and Judicial-Disability Proceedings provides that “in exceptional circumstances, the Chief Judge or the judicial council may ask the Chief Justice to transfer [a judicial misconduct complaint] to a judicial council of another circuit.” The commentary to Rule 26 lists the following examples of “exceptional circumstances”:

- 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 questions policies or governance of the home court of appeal.

Complainant's vague assertions of conspiracy give rise to no such "exceptional circumstances", and the request to transfer the complaint is denied.

Allegations re telephonic hearings

Complainant alleges that the magistrate judge "engaged in racial subordination of [me] as a black African American female citizen, when [defense counsel] had contacted [the magistrate judge] on his personal cellular phone that evidences ex parte communication to obtain unfair advantage in the case."

The record shows that defense counsel attempted to arrange a telephonic conference with the magistrate judge regarding complainant's insistence that the depositions of two witnesses could not proceed because complainant's motion to quash those depositions was pending. The magistrate judge was not in chambers and defense counsel called the magistrate judge's cell phone number provided by chambers staff. During the telephone conference the magistrate judge denied complainant's motion to quash and ordered that the two depositions should proceed. A second telephone conference was held several hours later when complainant sought to postpone her own deposition and to have it held in chambers. The magistrate judge denied complainant's requests and ordered that the deposition should proceed.

It was not improper for chambers staff to give defense counsel the magistrate judge's cell phone number, or for defense counsel to seek telephone conferences with the magistrate judge to address issues that arose in attempting to conduct the three depositions. The telephone calls did not constitute ex parte communication between defense counsel and the magistrate judge because, as the transcripts clearly show, complainant participated in the two telephone conferences. These allegations are therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant's assertion that defense counsel sought to confer with the magistrate judge to obtain unfair advantage is construed as an allegation that during the telephone conferences the magistrate judge denied, based on racial animus, complainant's motion to quash and her request to postpone her own deposition and to have it held in chambers.

To the extent that these allegations relate directly to the merits of the magistrate judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of racial animus appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Without providing any further information in support of her claim, complainant states that despite telling the magistrate judge that "[defense counsel] made an offensive racial threat toward [me]," he "cared less due to the race of the party that's not fair and of white supremacy."

To the extent that this allegation relates directly to the merits of the magistrate judge's implied decision not to inquire further into complainant's claim that defense counsel threatened her, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of racial animus appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Allegations re intentional misrepresentation of facts in orders

Without clearly distinguishing between the various orders entered by the judge and by the magistrate judge, complainant alleges that they "deliberately distorted the truths which had occurred in the video tape" of her arrest "to racially subordinate [my] Moral Character as an African American woman" and to favor the defendants. She further protests that the chief judge and the magistrate judge denied her motion for their recusal. Complainant submits that these "white supremacy orders racially degrade [me] as a[n] African American female, ... obstruct the due and fair administration of justice," and demonstrate that the judge and the magistrate judge engaged in "serious racial hatred misconducts ... that create a strong appearance of impropriety/hatred toward African Americans before the Court."

To the extent that these allegations relate directly to the merits of the chief judge's and the magistrate judge's decisions, they are subject to dismissal under 28 U.S.C. §

352(b)(1)(A)(ii). In other respects, any assertion of racial animus appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Without presenting any evidence in support of the assertions, complainant also claims that the judge and the magistrate judge engaged in “violent racial and threatening” extrajudicial conduct that detracted from the dignity of their office, interfered with the performance of their official duties, and reflected adversely on their impartiality in her case.

Such conclusory assertions lack sufficient evidence to raise an inference that misconduct has occurred and are therefore also 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.

An order dismissing the complaint is entered simultaneously herewith.

 June 13, 2019


Carl E. Stewart
Chief Judge

AUG 05 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-19-90088 and 05-19-90089
Petition for Review by [REDACTED]
of the Final Order Filed June 27, 2019,
Dismissing Judicial Misconduct Complaint
Against [REDACTED] and
[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 Carl E. Stewart, filed June 27, 2019, dismissing the Complaint of [REDACTED] against [REDACTED]

[REDACTED]
[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

7-30-2019
Date


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