

JUN 27 2019

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Complaint Numbers: 05-19-90099 and 05-19-90100

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MEMORANDUM

Complainant, a pro se litigant, has filed a judicial misconduct complaint regarding the conduct of subject United States District Judge and the subject United States Magistrate Judge.

Complainant contends that despite presenting evidence that the defendant's expert in benefits calculations was not an expert, that the magistrate judge's denial of his motion to dismiss the testimony of, and evidence associated with, the defendant's "non-expert," and the judge's overruling complainant's objections to that decision, "establish[ed] a precedent that non-experts for a government agency may testify." He alleges that the magistrate judge's and the judge's acceptance of the purported non-expert's testimony, and rejection of complainant's non-expert testimony regarding benefits calculations, constitute evidence of "judicial bias and judicial discrimination ... as a means to deny this disabled citizen legal rights to receive full benefits." Complainant further complains that the magistrate judge's and the judge's failure to order the defendant to comply with its own policy and produce "[a particular form] showing benefits calculations using the redetermined [Average Current Earnings]" is "more evidence of judicial bias."

Complainant also asserts that after a five-month delay, the judge's entering "a very curt and dismissive ... 1-page decision ... less than 4 days" after complainant wrote to the chief judge was "not just a coincidence (judicial retaliation)." In addition, he complains the judge "failed to exercise [his] responsibility of due-diligence ... to order the Defendant to explain its mathematical incompetence" and "[to] ensur[e] that I was paid" by the defendant in compliance with the court's final judgment.

To the extent that the allegations relate directly to the merits of the magistrate judge's and the judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging undue delay by the judge in entering final judgment, a delay of five months in rendering a decision is not, of itself, evidence of judicial misconduct, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, any assertions of bias, discrimination, and retaliation appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, 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.

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An order dismissing the complaint is entered simultaneously herewith.

June 23, 2019

  
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Carl E. Stewart  
Chief Judge

SEP 27 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-19-90099 and 05-19-90100  
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.

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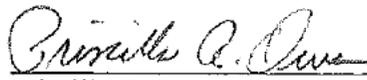
ORDER

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 June 27, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

9-17-2019  
Date

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