

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
FILED

OCT 08 2019

FIFTH CIRCUIT  
LYLE W. GAYE, CLERK

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Complaint Numbers: 05-19-90151 and 05-19-90152

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MEMORANDUM

Complainant, a state prisoner, complains that despite “clearly demonstrat[ing] a factual basis for relief” in his civil rights lawsuit against prison officials, United States Magistrate Judge A intentionally dismissed the lawsuit as frivolous to cause complainant to incur a third strike for the purposes of 28 U.S.C. § 1915(g), an allegedly unlawful decision that “barred [me] of utilization to the Courts.” For example, complainant appears to claim that Magistrate Judge A’s imposition of a third strike resulted in the Fifth Circuit denying his motion to proceed in forma pauperis [“IFP”] in an unrelated appeal, and/or it was “unlawful” to impose the strike while that motion was pending, and/or the magistrate judge intentionally imposed the strike in order to deny IFP should complainant file an appeal from her decision.

Complainant concludes that Magistrate Judge A “retired off the bench to avoid conducting a hearing or trial of a factual dispute,” her “intentional and deviant behavior create[d] fraud, and “such behavior is judicially impermissible.”

As provided by 28 U.S.C. § 351(d)(1) and Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, retired judicial officers are not subject to the Judicial Improvements Act and the complaint as to Magistrate Judge A may therefore be concluded under 28 U.S.C. § 352(b)(2).

Complainant complains that United States Magistrate Judge B denied his motions for reconsideration of Magistrate Judge A’s denial of IFP on appeal and dismissed his Rule 60(b) motion “without explanation” in “retaliation for [complainant’s] using the judicial process” to sue the defendant prison officials. He


submits that the magistrate judge violated his oath of office by failing to “report or intervene correctly to such conduct” and “by denying equal right [sic] to the poor.”

To the extent that the allegations relate directly to the merits of Magistrate Judge B’s decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of retaliation and bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

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.

*September 30*, 2019

  
Carl E. Stewart  
Chief Judge

DEC 03 2019

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

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No. 05-19-90151 through 05-19-90152  
Petition for Review by [REDACTED]  
of the Final Order Filed October 08, 2019,  
Dismissing Judicial Misconduct Complaint  
Against [REDACTED]  
Under the Judicial Improvements Act of 2002.

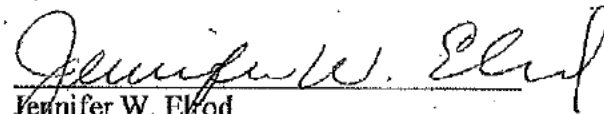
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ORDER

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 October 08, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore AFFIRMED.

11/25/19  
Date

  
Jennifer W. Elrod  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit