

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

OCT 10 2019

FIFTH CIRCUIT
W. GAYNE, CLERK

Complaint Numbers: 05-20-90002 through 05-20-90004

MEMORANDUM

Complainant, a pro se litigant, has filed a judicial misconduct complaint against the subject Chief United States District Judge, United States District Judge A, and former United States District Judge B.

Complainant alleges the chief district judge assigned her case to Judge B, a senior judge. However, complainant filed her lawsuit in July 2015 and the chief judge's term commenced on 2016. The allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains the chief district judge failed to notify her when Judge B assumed inactive senior status almost two years after final judgment was entered in complainant's case. The allegation is also subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges the chief district judge failed to intervene sua sponte to overturn Judge B's rulings. The allegation relates directly to the merits of the chief district judge's implied decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant complains Judge A took no action on her "Emergency Relocation" filing. The judge's failure to rule on a purported motion docketed six days before the case was reassigned to another judge does not constitute evidence of undue delay and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

Complainant also complains the chief district judge and Judge A failed to "allow me the right to see my father before his death," and neither Judge A nor Judge B consolidated complainant's federal lawsuit in another jurisdiction (closed in June 2015) and the underlying case (filed in July 2015).

These allegations relate directly to the merits of the chief district judge's and Judge A's implied decisions or procedural rulings and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

As to Judge B, complainant's statements about the judge's length of service, taking inactive senior status, and failure to consolidate the two cases are construed as allegations of age-related disability and/or erroneous decisions. Regardless, a retired or deceased judge is not subject to the Judicial Improvements Act. See 28 U.S.C. § 351(d)(1) and Rule 1(b) of the Rules For Judicial Conduct and Judicial-Disability Proceedings. Because Judge B is deceased, "action on the complaint is no longer necessary because of intervening events" and the allegations against Judge B are therefore concluded. See 28 U.S.C. § 352(b)(2) and Rule 11(e) (permitting chief judge to conclude a proceeding "upon determining that intervening events render some or all of the allegations moot").

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.



Priscilla R. Owen
Chief Judge

October 6, 2019

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-20-90002 and 05-20-90004
Petition for Review by [REDACTED]
of the Final Order Filed October 10, 2019
Dismissing Judicial Misconduct Complaint

Against [REDACTED]

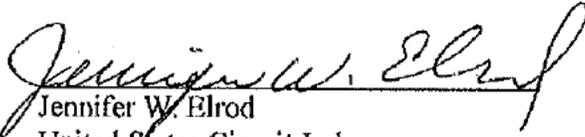
Under the Judicial Improvements Act of 2002.

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 Priscilla R. Owen, filed October 10, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore AFFIRMED.

November 21, 2019
Date


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