

FILED

July 2, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90109

M E M O R A N D U M

Complainant, a pro se civil litigant, has filed a complaint alleging misconduct by the subject United States Magistrate Judge.

In March 2020, noting that the civil complaint was signed by an “administrator” on behalf of complainant, the magistrate judge entered a non-dispositive order requiring complainant to cause counsel to enter an appearance on its behalf. The order notified complainant that if an attorney was not retained to represent complainant’s interests, complainant would be stricken as a plaintiff for failure to comply with FED. R. CIV. P. 11(a), and the case would be dismissed without prejudice for want of prosecution pursuant to FED. R. CIV. P. 41(b).

Because complainant did not consent to proceed before a magistrate judge, complainant asserts that the subject magistrate judge lacked jurisdiction to enter the order. Complainant further complains that the “alleged” order “posed as a legal process to compel [complainant] to perform duties that are not required by [FED. R. CIV. P.] 11(a),” “caused a delay in the court proceedings,” and “lack[ed] the seal and teste of process of the court.”

Complainant also complains that the magistrate judge failed to recuse as she was “instructed to do” by complainant’s motion to vacate the order and caused “another avoidable delay” by filing a recommendation that the case should be dismissed for failure to comply with that order. Complainant concludes that the magistrate judge’s purportedly “dilatory practices” were

contrary to the “obligation to reduce or eliminate unnecessary cost” and “jeopardize[d]” complainant’s “full rights to be heard” in the district court.

To the extent that the allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation that the magistrate judge, to whom the presiding judge referred preliminary matters pursuant to 28 U.S.C. § 636(b)(1)(A), lacked jurisdiction to issue a non-dispositive order, the assertion that the order was invalid because it “lacked the seal and teste of process of the court,” and the claim that the order and recommendation resulted in improper and prejudicial delays, are subject to dismissal as frivolous 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.



Priscilla R. Owen
Chief United States Circuit Judge

_____ July 1 _____, 2020

FILED

August 20, 2020

Lyle W. Cayce
Clerk

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-20-90109

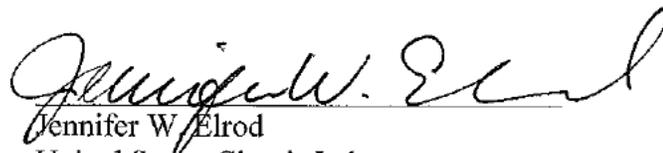
Petition for Review by [REDACTED]
of the Final Order Filed July 2, 2020,
Dismissing Judicial Misconduct Complaint
Against [REDACTED]
Under the Judicial Improvements Act of 2002.

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 July 2, 2020, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

August 18, 2020
Date


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