

**FILED**

December 9, 2021

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Numbers: 05-22-90010 and 05-22-90011

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## MEMORANDUM

Complainant, civil litigant, alleges that the subject United States District Judge and the subject United States Magistrate Judge “were part of the scheme . . . concocted” by complainant’s attorney and defense counsel “to have my case dismissed with prejudice during the summary judgment phase.”

In support of this claim, complainant submits that the judge and defense counsel engaged in improper ex parte communication which resulted in “not only one order but two orders for [defense counsel].”

— In the first order granting complainant’s motion for an extension of time to respond to the Defendant’s motion for summary judgment, the judge stated: “[T]he Court has been contacted by counsel for Defendant who advised they have no objection to the [Plaintiff’s motion].”<sup>1</sup>

Pursuant to Canon 3(A)(4)(b) a judge may, “when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte

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<sup>1</sup> Elsewhere in the complaint, complainant refers to an email from defense counsel advising her attorney that he did not object to a brief extension. Although it is unclear when defense counsel communicated with chambers, he communicated the same information to complainant’s attorney several days before the order was entered.

communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.” Counsel’s ex parte communication advising the Court that the Defendant did not oppose the Plaintiff’s motion clearly falls within the “administrative purpose” exception.

— In the second order, the judge granted complainant’s “Motion to Continue Trial With Consent.” Given that complainant offers no information regarding defense counsel’s purported ex parte communication with the court regarding the unopposed motion, the claim is nonsensical.

The allegations of improper ex parte communication are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant appears to further complain that, after the motion to continue trial was granted, the magistrate judge entered a revised scheduling order which “did not allow further discovery request,” thereby demonstrating the magistrate judge’s participation in the attorneys’ scheme to dismiss complainant’s lawsuit prematurely.

Complainant also complains that the judge denied her Motion to Set Aside the Final Judgment alerting the court to the attorneys’ “scheme and fraud on the Court,” and he failed to refer the attorneys to the State Bar for disciplinary action. She submits that these decisions constitute additional evidence of the judge’s participation in the attorneys’ scheme.

To the extent that these 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 allegations of conspiracy 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.



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Priscilla R. Owen  
Chief United States Circuit Judge

December 3, 2021

**FILED**

February 15, 2022

Lyle W. Cayce  
Clerk

**Before the Judicial Council  
of the Fifth Circuit**

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Complaint Number: 05-22-90010 and 05-22-90011  
The Petition for Review by [REDACTED] Against  
[REDACTED]  
[REDACTED]  
[REDACTED]

Under the Judicial Improvements Act of 2002.

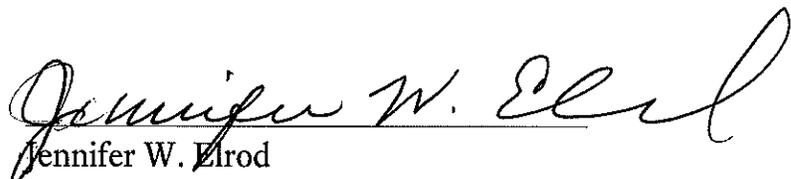
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**ORDER**

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 Priscilla R. Owen, filed December 09, 2021, dismissing the Complaint against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Feb. 11, 2022  
Date

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