

FILED

November 14, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90085 through 05-22-90088

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge in a civil proceeding, and by the three subject United States Circuit Judges in the related appeal.¹

Rule 26 Request

Complainant submits that each member of the Judicial Council for the Fifth Circuit is required to disqualify herself or himself pursuant to Rule 25 of the Rules For Judicial-Conduct and Judicial-Disability Proceedings “if by any reason of bias or prejudice her and/or his fair participation in this Complaint Process would be compromised.” Complainant requests that if all Judicial Council members disqualify themselves, the instant complaint be transferred to the Judicial Council of another Circuit.

Rule 26 provides that “[i]n exceptional circumstances, the chief judge or the judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit.” The commentary to Rule 26 lists the following examples of “exceptional circumstances”:

¹ To the extent that complainant also refers to (alleged) misconduct by two other United States District Judges, she has confirmed that they are not subjects of the instant complaint.

- in the case of a serious complaint where there are multiple disqualifications among the original judicial council,
- where the issues are highly visible and a local disposition may weaken public confidence in the process,
- where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate,
- or where a complaint calls into questions policies or governance of the home court of appeal.

A review of the underlying proceedings and associated appeals suggests no basis for disqualification of multiple Judicial Council members and, in the absence of any other “exceptional circumstance,” the request to ask the Chief Justice to transfer the complaint is DENIED.

Allegations against district court judge

Complainant complains that the judge erroneously and improperly granted the defendant’s motion for summary judgment. She further alleges that the judge’s denial of complainant’s motion for default judgment as frivolous, and the warning that complainant might be subject to sanctions if the court found she had engaged in vexatious litigation or acted in bad faith, were also erroneous and improper because they were based upon (purportedly) “inaccurate and fraudulent orders” entered by a judge in another case.

Complainant also asserts that the judge’s adverse rulings and biased conduct were motivated by racial animus and constitute evidence of “demonstrably egregious and hostile” treatment of a litigant. For example:

- “[T]his case also involve[d] a claim of racial discrimination and libel and slander against [the defendants] that [the judge] were [sic] more than willing to allow them to get away with.”

- By referring to complainant’s “repeated and frivolous case filings” and/or warning her against engaging in vexatious litigation or acting in bad faith, the judge employed “selfish, racist, and oppressive slogan(s) commonly used by whites who are racist.”
- The judge’s intentional delay in ruling on complainant’s post-judgment motions “until after three [subject circuit judges] entered their opinion,” followed by the erroneous and improper denials of the motions, constitute evidence of “racial discrimination.”

To the extent that these allegations relate directly to the merits of rulings or procedural decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of bias, hostility, racial animus, and intentional delay appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.”

Allegations against circuit judges

Complainant complains that the three circuit judges—who she notes “are all white”—erroneously and improperly affirmed the district court’s orders. For example, the circuit judges:

- Accepted the Appellees’ “fraudulent misrepresentation” that, prior to February 2019, complainant had made five false “Customer Injury Claims.”
- Failed to address complainant’s argument that the district judge’s denial of default judgment and sanctions warning were predicated upon another judge’s “inaccurate and fraudulent orders.”
- Held that complainant’s Notice of Appeal designated only the three orders entered by the district court, a decision complainant

alleges amounted to “[a] racial hatred and/or ethnicity joke that constitutes intentional discrimination” and “oppressive misconduct . . . aimed at stripping [me] . . . an African American Citizen out of this viable Right or opportunity to seek further judicial review of [the magistrate judge’s text orders].”

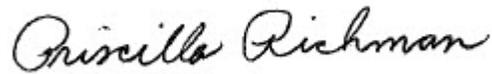
- Affirmed, and “urged [complainant] to heed,” the district court’s “selfish, racist, and oppressive” sanctions warning solely because the district judge is “white.” Complainant submits that the circuit judges’ “personal and derogatory conduct and remarks . . . were irrelevant to the issues presented on appeal” and “overzealously instill[ed] in [her] mind” a “hostile and extreme degree of racial oppression, dread and fear.”
- Entered an adverse opinion for “no other reason [than] to racially degrade and offend [me] by attacking [my] honor and reputation and to allow the [Appellees] to escape culpable misconduct.”
- Ordered complainant to pay the Appellees’ costs in retaliation for her moving “to strike the Appellees’ principal brief.” Complainant who describes herself as “indebted and disabled,” protests that “not only is this biased and prejudicial misconduct by them unconstitutional, but [it] imposes upon [me] [a] financial obligation that is unfair, “shocking to the conscience,” and extremely oppressive.”

To the extent that these allegations relate directly to the merits of rulings or procedural decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of racial animus, 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 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.

This is complainant's fourth complaint to be dismissed under 28 U.S.C. §§ 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and she has been warned previously against filing a further merits-related, conclusory, frivolous, or repetitive complaint. Complainant's right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why her right to file further complaints should not be so limited.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla Richman
Chief United States Circuit Judge

November 10, 2022