

FILED

April 5, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90022

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint (and three highly repetitive supplements) alleging misconduct by the subject United States Magistrate Judge in the underlying district court proceeding.

To the extent that complainant repeats allegations raised and dismissed in a prior complaint proceeding, the repetitive allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).¹

Complainant further alleges that the judge:

- “intentionally and deceptively concealed” defense counsel’s “notorious history for [sic] grievance proceedings” in granting an application for pro hac vice admission, and did so without jurisdiction and “to curry favor” with the defendant;
- violated Canons 3C(1)(a) and (b) of the Code of Conduct for United States Judges by improperly denying complainant’s

¹ Complainant again alleges that the judge lacked authority to enter orders because the parties did not consent to proceed before a magistrate judge, “acted flagrantly as lawyer” by improperly, arbitrarily, and erroneously granting defense counsel’s application for pro hac vice admission, and improperly denied complainant’s motions challenging that decision. These claims were dismissed under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the decision was subsequently affirmed by the Judicial Council of the Fifth Circuit.

motion seeking her recusal/disqualification and/or by failing to recuse/disqualify sua sponte thereafter;²

- enjoined complainant from filing any further motions, pleadings, or notices, or other submissions until findings and a recommendation on the defendant’s Motion to Dismiss were issued, thereby resulting in the “arbitrary unfiling” of complainant’s post-injunction motion to show cause why defense counsel’s application for pro hac vice admission should not be denied;
- issued “clear[ly] hostile and harass[ing]” recommendations that the district court should grant the defendant’s Motion to Dismiss, deny complainant’s Motion to Amend Complaint, strike complainant’s Addendum Complaint, Motion for Injunction Relief, and Sur-Reply, and enjoin complainant from filing any further lawsuit in the relevant Division without first obtaining prior permission from a judicial officer;
- arbitrarily revoked complainant’s “access to the ECF electronic filing system and [ordered] the Clerk’s Office [to] refuse to accept any filing from [me] sent through the Court’s emergency filing email”; and,

² Canons 3C(1)(a) and (b) of the Code of Conduct for United States Judges, Guide to Judiciary Policy, Vol. 2A, Ch. 2, provide:

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which:
 - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; [and,]
 - (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness[.]

— lacked authority to issue orders after final judgment was entered and after complainant filed a Notice of Appeal.

Complainant also alleges that, in violation of Rule 4(a)(4) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the conduct, recommendations, and decisions described demonstrate “clear retaliation against [me for filing] one complaint with the U.S. District Chief Judge about [the judge’s] violation of the local rules for admission Pro Hac Vice ... and also the complaint filed with the Judicial Council of the Fifth Circuit.”³

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 bias in favor of the defendant and retaliation against complainant 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.

The filing of repetitive complaints is an abuse of the complaint procedure. Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

³ Rule 4(a)(4) provides:

Cognizable misconduct includes retaliating against complainants, witnesses, judicial employees, or others for participating in this complaint process, or for reporting or disclosing judicial misconduct or disability[.]

An order dismissing the complaint is entered simultaneously herewith.

Priscilla Richman

Priscilla Richman
Chief United States Circuit Judge

April 5, 2023

FILED

May 3, 2023

Lyle W. Cayce
Clerk

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

Complaint Number: 05-23-90022

Petition for Review by [REDACTED] regarding
Complaint of Misconduct and/or Disability Against

[REDACTED]
[REDACTED]
Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

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 United States Circuit Judge Priscilla Richman, filed April 5, 2023, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

May 3, 2023
Date *Jennifer W. Elrod*
Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit