

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**

JAN 08 2016

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

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Docket Number: 05-16-90013

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MEMORANDUM

Complainant, a civil litigant, has filed a judicial misconduct complaint against the subject United States Magistrate Judge. Complainant submits that the magistrate judge and defense counsel must be related because they share the same last name, and therefore the magistrate judge should have disqualified herself in the proceeding.

Canon 3C(1)(d)(ii) of the Code of Conduct for United States Judges provides that a judge shall disqualify herself in a proceeding in which a lawyer acting in the proceeding is related to the judge or the judge's spouse, or a person related to either, within the third degree of relationship. The undersigned conducted a limited inquiry pursuant to 28 U.S.C. § 352(a), and the magistrate judge confirmed that neither she nor her husband, with whom she shares her last name, are related to defense counsel within a third degree of relationship.

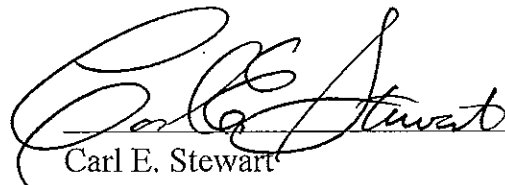
The allegation that the magistrate judge violated Canon 3C(1)(d)(ii) by failing to disqualify herself is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant reports that the magistrate judge and defense counsel "were carrying [sic] a casual and heavy conversation" prior to the commencement of the pretrial conference, and he concluded that they "seem[ed] to know each other well." Complainant recounts further that during settlement negotiations, the magistrate judge advised him (and his attorney) that the defendant's expert evidence weighed against his prevailing at trial, and she also conveyed defense counsel's representation that the

defendant “[was] not going to give in” to his settlement demands. He alleges that this conduct demonstrates that the magistrate judge was biased in favor of the defendant.

Nothing in the conduct described is sufficient to support a finding of judicial misconduct, and the allegations are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

  
Carl E. Stewart  
Chief Judge

November 4, 2015

U. S. COURT OF APPEALS  
**FILED**

**FEB 11 2016**

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

**FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK**

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No. 05-16-90013

Petition for Review by [REDACTED]  
of the Final Order Filed January 8, 2016  
Dismissing Judicial Misconduct Complaint Against

[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 Stewart, filed January 8, 2016, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

February 5, 2016  
Date

Priscilla R. Owen  
Priscilla R. Owen  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit