

FEB 11 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Number: 05-16-90040

MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject United States District Judge. Complainant explains that after the judge denied various motions “for failing to demonstrate good cause”, he attempted to remedy the deficits by filing three further pleadings (comprising a total of 2688 pages). He asserts that upon reviewing those motions, the judge “became ‘scorned’ at having to be advised of such gross malfeasance and/or public corruption” by the trial judge and “transcript rewrite person”, and “unjustifiab[ly]” ordered that the motions be stricken “without investigation or inquiry, showing no concern.” Complainant protests further that the judge “proclaim[ed] he lacks the authority to request” that the United States Department of Justice investigate the claims of malfeasance and corruption.

Complainant also contends that the judge’s conduct to date demonstrates bias in favor of the respondent. In support of this conclusion, he states that he has “learned the [judge] ... spent four years as an Asst. Dist. Attorney in the [County] D.A.’s office”, i.e., the judge “was basically mentered [sic] and indoctrinated by the same ‘courthouse cabal’ at issue in this case.” Complainant submits that the judge “erroneously ‘expunged’ all the ‘incriminatory substance’ from the official record, and he did so for reasons that are quite obvious ... he is not going to allow justice to prevail in this cause.”

Complainant submits that bias is also evident in the judge’s denying most of his motions, ordering him to seek leave of the court to file future pleadings, and limiting him to a 10-page reply “even though I have 29 grounds of error to canvass, and an error negation issue”. In addition, without providing any evidence in support of the allegation,

he asserts that the judge “engaged in ex parte communications with the State’s Attorney on the filing of State Records then secretized what records the State submitted.”

To the extent that the allegations relate directly to the merits of the judge’s decisions, including an implicit failure to recuse himself *sua sponte* due to a purported conflict of interest, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory allegations of bias are insufficient to support a finding of judicial misconduct and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

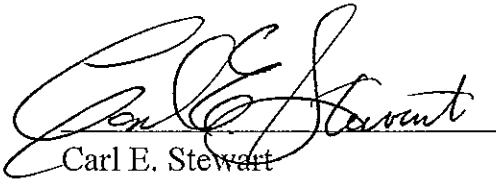
Complainant also alleges that after ordering that the motions be stricken, the judge “has since quit responding to my motions altogether”, however a review of the docket indicates that the judge has ruled promptly on complainant’s recent motions.

To extent, if any, that complainant is alleging undue delay, the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant requests that the undersigned: instruct the subject judge to address complainant’s claims or recuse himself; transfer the pending proceeding to another United States District Judge; order the district court to refile the stricken motions; and, recommend that the United States Department of Justice launch an inquiry into complainant’s claims. The requests are denied.

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.


Carl E. Stewart
Chief Judge

January 20, 2016

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90040

Petition for Review by [REDACTED]
of the Final Order Filed February 11, 2016
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 Stewart, filed February 11, 2016, dismissing the Complaint of [REDACTED], against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

March 29, 2016

Date

Priscilla R. Owen

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