

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JUN 06 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-16-90081

MEMORANDUM

Complainant, a *pro se* litigant, complains that the subject United States District Judge denied him the opportunity “to fully and fairly defend my case” by prejudicing “the minds of the jury against me”. For example, the judge told the jury that complainant, a non-lawyer, had elected to represent himself, and therefore the court might need to intervene in the hearing if complainant asked questions outside the bounds of what was appropriate. A review of the transcript shows that the judge emphasized that jurors should not interpret any such interruptions by the court as indicating judicial preference for either the plaintiffs, who were represented by counsel, or for complainant.

As further evidence of the judge’s bias against him, complainant reports that the judge instructed him, outside the presence of the jury, not to raise in his opening statement an issue previously ruled on by the court. He complains that the judge then allowed plaintiffs’ counsel to refer to the issue in an opening statement, and in questioning one of the plaintiffs. Complainant submits that the judge also issued an instruction informing the jury of the Court’s ruling on the issue, but failed to mention that the magistrate judge had recommended that the (plaintiffs’ motion for summary judgment on the) claim before the jury should be denied.

These allegations relate directly to the merits of the judge’s decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that the judge violated the law by omitting from the trial transcript a discussion between the judge and plaintiffs’ counsel regarding “direct admission of the Plaintiffs [sic] perjury during the trial.” He also complains that the judge

“denied and ignored” his attempts to have the transcript corrected. The record shows that in a response to Stone’s correspondence about the purported omission, the judge confirmed that the trial transcript was complete, and explained that the post-verdict discussion took place “off the record” and was therefore not part of the official transcript.

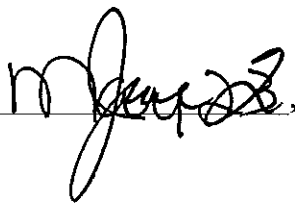
The allegation relates directly to the merits of the judge’s decision that the transcript was complete, and is therefore also subject to dismissal under 28 U.S.C. § 352 (b)(1)(A)(ii).

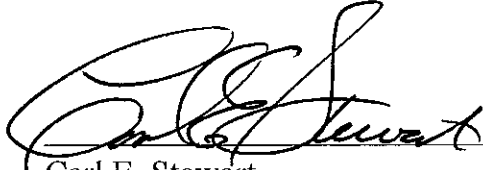
In addition, complainant accuses the judge of “Sleeping or Appearing to be Sleep [sic] during the trial as documented in the official trial [transcript], which the Judge clearly acknowledgment [sic] in his own testimony.” He appears to be referring to the judge’s instruction to the jury that due to a severe astigmatism, the judge might occasionally close his eyes for brief periods during the trial, but he was not “dozing off.”

Clearly, any allegation that the judge’s comment is evidence that he fell asleep during the trial is entirely frivolous, and is subject to dismissal under 28 U.S.C. § 352(b) (1)(A)(iii).

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.

 2016


Carl E. Stewart
Chief Judge

JUL 27 2016

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90081

Petition for Review by [REDACTED]
of the Final Order Filed June 6, 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 June 6, 2016, dismissing the Complaint of [REDACTED], against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

7-18-2016
Date



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