

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Docket Numbers: 05-19-90060 through 05-19-90062

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U. S. COURT OF APPEALS  
FILED

MAR 11 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

M E M O R A N D U M

Complainants, two civil litigants, have filed a judicial misconduct complaint against the three subject United States Circuit Judges.

Complainants were defendants in a mortgage foreclosure lawsuit filed by Bank X. The parties consented to proceed before a magistrate judge who ruled in the complainants' favor. The bank filed an appeal, in which a three-judge panel (including one of the subject judges) held that the magistrate judge erred in finding that Bank X did not possess the right to foreclose under complainants' deed of trust, vacated the final declaratory judgment, and remanded for further proceedings. On remand, the magistrate judge concluded that the panel's decision was clearly erroneous and that failure to correct the error would result in manifest injustice. He again ruled in complainants' favor. Bank X filed an appeal.

The three subject judges reversed the magistrate judge's decision and rendered judgment in favor of Bank X. In the opinion, the judges discussed at length the magistrate judge's decision to disregard the prior panel's opinion.

Allegations

Complainants allege that the judges' opinion was not only erroneous, but also demonstrated bias against homeowners in mortgage foreclosure cases, in general, and against them, in particular. They submit that the judges' characterization of their conduct as homeowners who continued to live in their home for nearly a decade without paying the mortgage as living without cost was gratuitous, biased, and erroneous because, following the court's adverse ruling, they were responsible for "the principal sum plus all interest and other fees."

Complainants assert further that the judges' "anger and bitterness" regarding the magistrate judge's conduct upon remand guaranteed that "no other outcome was ever going to be considered in our case." They also surmise that "where tribunal and verdict is

done electronically” without affording the parties a hearing, “... there is little chance a homeowner is going to know if a judge is [engaging in misconduct].”


In addition, complainants contend that the judges’ bias against them “continues ... post-opinion” because in addressing the issue of judicial discretion on remand in their opinion in a criminal appeal, the judges cited complainants’ appeal “in a petty statement of unity against [us].”

Complainants also report that in an “audit” of mortgage foreclosure appeals in a 12-month period, they found eleven matters “involv[ing] [Bank X].” They state that the subject judges served as a panel in three matters (“almost a third”) and ruled in Bank X’s favor in each instance. They submit that those rulings constitute additional “damning evidence” of the judges’ bias against homeowners.

To the extent that these allegations relate directly to the merits of the judges’ rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent, if any, that complainants are implying that the judges interfered with the clerk’s random assignment of appeals in mortgage foreclosure cases involving Bank X, such a conclusory assertion is insufficient to support a finding of judicial misconduct and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the assertions of bias appear entirely derivative of the merits-related charges, but to the extent that the allegations are separate, they are wholly unsupported, and are therefore 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.

  
Carl E. Stewart  
Chief Judge

, 2019

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

APR 03 2019

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

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No. 05-19-90060 through 05-19-90062  
Petition for Review by [REDACTED]  
of the Final Order Filed March 11, 2019,  
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 Carl E. Stewart, filed March 11, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

3-29-2019  
Date

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