

FILED

April 16, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90052

REVISED MEMORANDUM

The order entered March 19, 2020 dismissing the above-referenced judicial misconduct complaint is vacated and is replaced by this revised order.

Complainant, a state prisoner, complains that the subject United States District Judge “violated his oath of office,” “performed the practice of law,” and denied complainant’s due process rights by:

- erroneously and improperly construing a Rule 60(b) motion as a Rule 59(e) motion “to suit his needs for denial”;
- “ignor[ing]” the “newly discovered evidence” complainant submitted in support of the Rule 60(b) motion; and,
- failing to recuse sua sponte because the Rule 60(b) motion challenged the judge’s review of, and adoption of, the magistrate judge’s recommendations.

Complainant contends that “[o]nly through bias or insubordination or unreasonable application of clearly established federal law could any reasonable trier of fact” find that complainant had failed to establish “reasonable doubt” about the state criminal trial proceedings.

To the extent that these allegations relate directly to the merits of the judge’s decisions or procedural rulings, including the implied decision not to recuse sua sponte, they are subject to dismissal under 28 U.S.C.

§ 352(b)(1)(A)(ii). In other respects, any assertions of “bias or insubordination” 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.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Priscilla R. Owen
Chief United States Circuit Judge

April 15, 2020

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-20-90052

Petition for Review by [REDACTED]
of the Revised Final Order Filed April 16, 2020,
Dismissing Judicial Misconduct Complaint
[REDACTED]

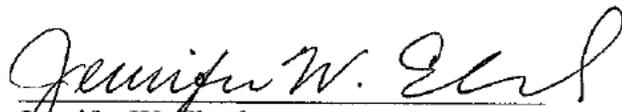
Under the Judicial Improvements Act of 2002.

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 revised order of Chief Judge Priscilla R. Owen, filed April 16, 2020, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore AFFIRMED.

7/14/20
Date


Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit