

FILED

May 7, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90064

M E M O R A N D U M

Complainant, a pro se litigant, alleges that the subject United States Magistrate Judge, presiding by consent, permitted defense counsel to provide discovery and file interrogatory responses and motions after scheduled deadlines, and to “knowingly lie” about not seeing subpoenas complainant (purportedly) served on the defendants; “let [defense counsel] off without punishment” after complainant advised the court about (alleged) misconduct; granted defense counsel’s request for a telephone conference “based on false information”; instructed defense counsel to “withhold evidence”; “attempt[ed] to rule in the defendants’ favor without [my] fully pleading cause on 11/21/2019”; and, instructed defense counsel to file a motion to compel within ten days.

Complainant further alleges that the magistrate judge: “knowingly lied and told me serving the subpoenas by certified mail was improper”; “block[ed] [me] from retrieving information from the defendants”; “forced [me] to attend a [November 21, 2019] conference I requested be rescheduled” and failed to recuse herself; and, failed to act on complainant’s claims that clerk’s office personnel failed to docket her motions and “add[ed] information to the docket to benefit [defense] counsel and the defendants.”

A review of the record, including the audio-recordings of the four conferences, demonstrates that these allegations are based on disagreements with decisions, misunderstanding of FED. R. CIV. P. and local court rules, and misinterpretation of the magistrate judge’s clarifications of procedure and instructions to the parties. To the extent that the allegations

relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias appear to be either derivative of the merits-related charges or based on fundamental misapprehensions of procedures and instructions, 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).

Complainant also complains that the magistrate judge “kept on striking status report after status report from [me]” and “constantly mov[ed] the settlement conference in favor of the defendants.”

The allegations relate directly to the merits of decisions or procedural rulings and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant appears to complain that the magistrate judge failed to rule on a motion within two weeks.

A delay of two weeks in rendering a decision is not evidence of judicial misconduct, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

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
Chief United States Circuit Judge

_____, May 6, 2020

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

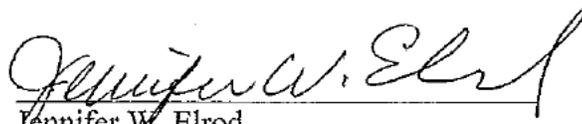
No. 05-20-90064
Petition for Review of [REDACTED]
of the Final Order Filed May 07, 2020,
Dismissing Judicial Misconduct Complaint against
[REDACTED]
Under the Judicial Improvements Act of 2002.

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 Priscilla R. Owen filed May 07, 2020, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore AFFIRMED.

July 30, 2020
Date


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