

FILED

February 5, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-21-90031 through 05-21-90033

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the three subject United States Circuit Judges [“Judges A, B, and C”].

Rule 26 request

Complainant requests that his complaint be transferred to another circuit pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings which provides that, “[i]n exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit.” He submits that no judge of this court can be impartial in considering his complaint because his Petition for Rehearing En Banc in the underlying appeal was denied, some judges might have “a personal relationship to the [subject] judges,” and “allowing the judges in this circuit to investigate their [sic] selves won’t maintain integrity in this circuit.”

I find that there are no exceptional circumstances that would warrant my asking the Chief Justice to transfer the complaint to another circuit.

The Rule 26 request is DENIED.

Allegations

Complainant alleges that “instead of issuing a warning” when he missed the docketed deadline for filing a reply brief, the judges “intentionally

submitted a predetermined ruling against me.” Noting that pursuant to General Order 2020-4 (entered March 25, 2020) granting an automatic 30-day extension of deadlines to pro se filers, complainant submits that the docketed deadline for filing his reply brief should have been revised to April 23, 2020, but the judges “took the opportunity to defy” the General Order “so they could issue a decision against me [on April 17, 2020] without viewing my evidence (reply brief).”

Given that the panel’s ruling was based on the briefs filed by complainant and the Appellee, it appears that this allegation is aimed at a “premature” —rather than a “predetermined” —ruling entered before the revised deadline for filing a reply brief had elapsed. It was not the judges’ responsibility to be aware of, let alone update the docket to reflect, the automatic 30-day extension of complainant’s filing deadline. Regardless, despite his protestations “that the damage was already done,” it appears complainant suffered no prejudice because, at his request, the panel withdrew its order to afford him an opportunity to file a reply brief, and Judge A subsequently granted complainant’s motion for leave to file the reply brief out of time.

Complainant further alleges that the judges then “entered the same predetermined opinion . . . with the exception of a few words being changed around or omitted . . . to make the appearance that they actually examine[d] my evidence.” Noting that in his briefs he reported four instances of Government counsel sending emails containing purportedly “threatening” statements to deter him from filing evidence in support of certain claims, complainant asserts that the judges “displayed prejudice and bias against me” and “special treatment for the Government attorney” by addressing only the three least threatening of the four statements. He also complains that the judges “fail[ed] to follow and abide by” federal and state laws and precedent “regarding the Government attorney’s egregious misconduct against me.”

In addition, complainant protests that: his motion to recuse Judge C for conflict of interest was not addressed prior to the issuance of the mandate;

Judge C improperly and erroneously denied the recusal motion; and, “because the Court can’t legally say what influence that [Judge C] had on the rest of the panel,” Judge A’s and Judge B’s “impartiality is [also] in question.”

Complainant concludes that the judges’ initial premature ruling and their failure to find that he “provided direct, clear, and convincing evidence that a Government attorney committed a crime against me” constitute evidence of “(discrimination because of race) . . . because I’m a Black pro se filer.”

To the extent that these allegations relate directly to the merits of the judges’ decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of prejudice, bias, and race discrimination are insufficient to support a finding of judicial misconduct 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.



Priscilla R. Owen
Chief United States Circuit Judge

February 4, 2021

FILED

May 26, 2021

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

No. 05-21-90031 through 05-21-90033
Petition for Review by [REDACTED], of the Final Order
filed February 05, 2021, dismissing the Judicial Misconduct
Complaint against [REDACTED]
[REDACTED]
[REDACTED]

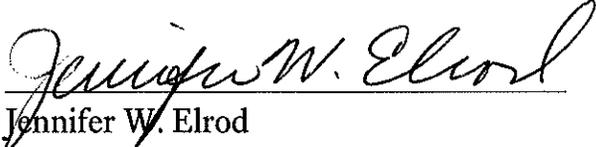
Under the Judicial Improvements Act of 2002.

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 February 05, 2021, dismissing the Complaint against [REDACTED]
[REDACTED], under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

5/25/2021
Date


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