

FILED

January 6, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-21-90034 and 05-21-90035

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject Senior United States District Judge in her district court proceeding, and by the subject United States Circuit Judge in dismissing complainant's prior complaint ["Complaint 1"] against the district judge.

Allegations against the District Judge

Complainant, who filed an application to proceed in forma pauperis in the district court proceeding and, shortly thereafter, paid the full filing fee, alleges that her civil rights were violated because she was "coerced threatened [sic] to pay \$400 then I was afforded information and help to serve the defendants."

The allegation appears to relate directly to the merits of the district judge's denial of the motion to proceed in forma pauperis and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further asserts that her case was "never assigned" to the district judge "as Senior judge." In support of this claim, she provided a copy of an online article that reported the judge's taking senior status, which was described as "a judicial retirement." However, not only was complainant's case assigned to the district judge more than four months before he took senior status but, as the article further explained, he elected to continue being assigned cases after taking senior status.

The allegation is frivolous and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also claims the district judge improperly “steered” her to file an appeal. A review of the record indicates complainant appears be referring to language in the final judgment notifying her of her right under FED. R. APP. P. 4(a) to appeal. Complainant submits the notice constituted a “willful,” “knowing,” and “felonious” conflict of interest because the district judge is currently serving as Chair on a Fifth Circuit Judicial Council Committee. However, the Committee’s sole purpose is to review and approve certain district court policies, i.e. Committee members play no role in appeal proceedings and have no cause to “steer” litigants to file appeals.

The allegation is frivolous and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Allegations against the Circuit Judge

In March 2020, complainant submitted a complaint against the district judge. Upon filing the complaint, the Clerk notified complainant of the complaint number allocated to the matter and advised her that, pursuant to 5TH CIR. PROC. 6(c), “[o]nce a complaint has been filed, it may not be supplemented by additional statements or documents except to correct inaccuracies in the original complaint. Supplements submitted after the complaint has been filed will be returned to the complainant if they do not comply with this section.”

Four weeks later, complainant submitted a supplement which she claimed merely addressed “inaccuracies” in Complaint 1. However, the Clerk determined that the supplement was an impermissible attempt to file additional allegations in Complaint 1. On April 28, 2020, the Clerk advised complainant that “rather than return the supplement to you pursuant to 5TH

CIR. PROC. 6(c), please advise us in writing whether the supplement should be filed as a new complaint,” and further instructed complainant that “[n]o action will be taken on your complaint until we receive your response to this inquiry.” On May 7, 2020, the Clerk entered the circuit judge’s order dismissing Complaint 1.

In the instant complaint, complainant states, incorrectly, that the Clerk advised her that Complaint 1 would not be filed until she responded to the Clerk’s inquiry. Based on this misapprehension, complainant complains that the circuit judge “wouldn’t accept correction of inaccuracies that I was afforded the opportunity [sic] by [the Clerk]” and dismissed Complaint 1 before complainant could respond to the Clerk’s inquiry.

The circuit judge played no role in the Clerk’s administrative determination that, pursuant to 5TH CIR. PROC. 6(c), the supplement could not be filed as part of Complaint 1, and these allegations are therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant seems to further allege that the circuit judge’s dismissal of Complaint 1 was erroneous and/or improper due to the district judge’s “conflict of interest with the U.S. Court of Appeals 5th Circuit.”

To the extent that the allegation relates directly to the merits of the chief judge’s decision, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation is frivolous and is 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.

This is the second complaint in which complainant has made frivolous allegations regarding the district judge’s conduct of the underlying district

court proceeding. Complainant is WARNED that should she file a further merits-related, conclusory, frivolous, or repetitive complaint, her right to file complaints may be suspended and, unless she is able to show cause why she should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.


EDITH H. JONES
United States Circuit Judge

December 4, 2020