

FILED

February 5, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-21-90038 and 05-21-90039

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge and United States Magistrate Judge in the underlying civil proceeding.

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: an appellate panel has previously affirmed the subject district judge’s misconduct in “[holding] the Government attorneys” were “above the law” and has thereby shown “a pattern of covering up the intentional criminal behavior of the Government attorneys”; Fifth Circuit judges are biased against pro se litigants and “a pro se filer case may be predetermined in this circuit”; “it’s an undisputed fact that a majority of this circuit’s judicial misconduct complaints come from pro se filers”; and, complainant’s judicial misconduct complaint against the appellate panel is pending.

I find that these conclusory assertions of bias do not constitute exceptional circumstances that would warrant my asking the Chief Justice to transfer the complaint to another circuit.

The Rule 26 request is DENIED.

Allegations - Magistrate Judge

Complainant alleges that in granting the defendant's (unopposed) motion to strike his demand for a jury trial, the magistrate judge "violated my Seventh Amendment constitutional right to a jury trial . . . This bias was intentionally done because I was a pro se filer, and they knew a bench trial gave [the district judge] the authority he wouldn't have in the jury trial that I formally requested."

To the extent that the allegation relates directly to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion of bias against a pro se litigant is insufficient to support a finding of judicial misconduct and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Allegations - District Judge

Complainant reports that in four pleadings filed between November 2018 and February 2019, he presented "direct, clear, and convincing" evidence that statements in the Government attorney's emails amounted to "intimidation, threats, and coercion" intended to deter him from filing evidence in support of certain claims. He asserts that the judge intentionally delayed addressing the Government attorney's "criminal activity" until November 2019, and failed to find that the Government attorney's statements amounted to "Obstruction of Justice" and "criminal behavior," "failed to follow and abide by State and Federal laws," "violated my Constitutional rights of fundamental fairness to present my case and due

process,” and intentionally “concealed” the Government attorney’s misconduct.

To the extent that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant alleges that the judge “intentionally delayed” ruling on, and then issued a ruling “intentionally conceal[ing],” the Government attorney’s purported misconduct, such conclusory assertions 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).

Complainant further complains that in the November 2019 order, the judge demonstrated “prejudice, bias, bad faith, and impartiality [sic]” in describing him as “a prolific filer” which, complainant submits, is a “derogatory term . . . used against someone who files several lawsuits, or who constantly files frivolous documents.”

Complainant has perhaps confused “prolific” (referring to large numbers or quantities) with “frivolous” (referring to merit), and there appears to be nothing derogatory in a judge’s noting that, based on the record, a litigant has filed numerous pleadings. Regardless, even if the remark were construed as expressing a negative opinion of complainant’s filing history, the Supreme Court of the United States has held that the presiding judge “may, upon completion of the evidence, be exceedingly ill disposed towards [a litigant] . . . But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings” *Liteky v. United States*, 510 U.S. 540, 551 (1994).

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

Complainant also complains that in denying his motion to submit new evidence, the judge erroneously and prejudicially held that “my certified medical illness and medical records to prove my serious health issues was [sic] hearsay.” Complainant contrasts this decision with the denial of his motion for sanctions after the judge accepted, without any supporting medical report, the Government attorney’s explanation that during a period in which she underwent a double mastectomy, followed by chemotherapy and treatment for post-surgical complications, she inadvertently neglected to schedule a deposition.

To the extent that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of prejudice is insufficient to support a finding of judicial misconduct and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant objects that the judge “continued to show his bias” by “knowingly us[ing] unsworn falsified Government expert reports to grant the Government summary judgment” and by granting the motion “without warning.”

To the extent that the allegation relates directly to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion of bias is insufficient to support a finding of judicial misconduct 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 complainant’s second merits-related, conclusory, and frivolous complaint in five weeks regarding related proceedings.

Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he 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.



Priscilla R. Owen
Chief United States Circuit Judge

February 4, 2021

FILED

May 12, 2021

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

No. 05-21-90038 and 05-21-90039

Petition for Review by [REDACTED] of the Final Order
filed February 05, 2021, dismissing the Judicial Misconduct
Complaint against [REDACTED]

Under the Judicial Improvements Act of 2002.

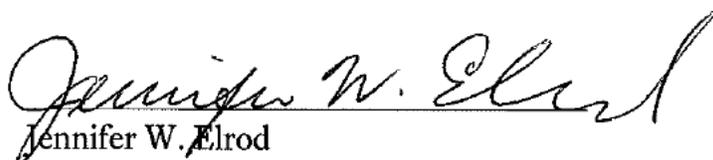
ORDER

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 February 05, 2021, dismissing the Complaint against [REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

May 10, 2021
Date



Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit