

FILED

June 16, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90126

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in complainant's 2019 employment discrimination proceeding.¹ Complainant was given an opportunity to clarify his claims, but portions of the complaint and supplemental clarifications are barely intelligible.

Complainant appears to allege that:

- The denials of his May 2019 and April 2020 motions to appoint counsel constitute proof that the magistrate judge “is in fact a dishonest racist and fascist.”
- The magistrate judge granted a defense motion for an emergency hearing after “ignoring my request” for the same relief and “while ignoring my motions to compel.”
- The magistrate judge “behaved as a bigoted chauvinistic bully” whose “goal was to intimidate me into ... an early settlement

¹ On the accompanying complaint form, complainant lists a 2021 case as relevant to his complaint, but he appears to make no allegations regarding that matter. Complainant also lists the presiding United States District Judge in both cases as a “subject judge” on the complaint form, but his only statement about the judge is that she referred preliminary proceedings to the subject magistrate judge. As such, the complaint is construed as being aimed only at the magistrate judge's conduct in the 2019 case.

conference to finesse a favorable cheap secret defendant deal” based on a “paternalistic belief I must take whatever deal the [defendant] offer[ed] to pay [a] Black Plaintiff as a US borne [sic] citizen[’s] right to a jury trial.”

- The magistrate judge “emp[ath]ize[d] with Defendant[’s] [employees] being predominantly white males” and, despite complainant’s presenting proof of racist and fraudulent conduct, the magistrate judge “ignored it all for white supremacy.”
- The magistrate judge “went Jim Crow” by: granting the defendant’s motion for a protective order to prevent depositions of two high-ranking White executives; giving complainant “bad legal advice suggest[ing] I depose” a lesser-ranking employee who “qualified as Black” because the magistrate judge “just was not comfortable for a black or African to depose a white male like himself”; and, “only required colored people to be deposed despite the defense providing a white witness.”
- Even though complainant “exposed [the defendant’s] perjury and fraud,” the magistrate judge “allowed [the defendant] to lie without penalty” and “proceeded to hide perjury among evidence to further intimidate me into submission of secrecy via judicial discrimination.”
- The magistrate judge improperly and prejudicially ordered complainant to file no further responses to the defendant’s motion for summary judgment without first obtaining leave of the court.
- The magistrate judge entered a “fascist” report recommending that the district court grant the defendant’s summary judgment motion and did so without addressing complainant’s arguments opposing the motion and without ruling on his motions for contempt.

— “My race allowed [the magistrate judge] to further the systemic racism [of] the federal system” by concealing evidence of the defendant’s fraud and evidence tampering and by permitting chambers staff to “manipulat[e] the PACER system.”

To the extent that these allegations relate directly to the merits of rulings or procedural decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of “bullying,” racial animus, and bias against a pro se litigant 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.”

Complainant further asserts that the magistrate judge intentionally delayed entering recommendations regarding the defendant’s motion for summary judgment until January 2021, almost nine months after the motion was ripe for consideration. He appears to claim that the delay was aimed at helping the defendant-company “weather the civil rights protests,” i.e., the Black Lives Matter protests that took place in 2020.

Such a patently conclusory assertion of intentional delay lacks sufficient evidence to raise an inference that misconduct has occurred, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Without pointing to specific rulings or hearings, complainant also claims “[i]t was clear . . . [the magistrate judge’s] tone towards [me] was one of annoyance.” In addition, complainant reports that he “called [chambers] many times and left voicemails to be ignored” and, the only time chambers staff answered the phone, that individual was “mad & annoyed.” He alleges that the magistrate judge “retaliated” by falsely “claim[ing] I was seeking

[legal] advice from” the court and chambers staff and instructing complainant to communicate with the court via written motions only.

To the extent that these allegations relate directly to the merits of the magistrate judge’s ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation of retaliation appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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.”

To the extent that complainant claims the magistrate judge expressed annoyance in rulings and/or hearings, the United States Supreme Court has held that judicial bias is not established by a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge’s ordinary efforts at courtroom administration—even a stern and short-tempered judge’s ordinary efforts at courtroom administration—remain immune.” *Liteky v. U.S.*, 510 U.S. 540, 555-556 (1994). The allegation 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.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

June 10, 2021

FILED

July 22, 2021

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

No. 05-21-90126

Petition for Review by [REDACTED] of the Final Order filed
June 16, 2021, dismissing the Judicial Misconduct Complaint
against [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 June 16, 2021, dismissing the Complaint against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

July 20, 2021
Date

Jennifer W. Elrod

Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit