

**FILED**

January 10, 2022

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-22-90003

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## MEMORANDUM

Complainant, an attorney, has filed a complaint alleging misconduct by the subject United States District Judge in six cases: a consolidated multidistrict litigation (“Suit 1”), three suits where complainant was counsel for plaintiff clients (“Suits 2-4”), and two suits where complainant represented himself as plaintiff (“Suits 5-6”). In Suit 6, complainant named the subject judge as one of several defendants.

Complainant complains that:

- The judge refused to recuse sua sponte in Suits 5 and 6.
- In Suit 6, the judge “ignored evidence,” referred to assertedly material facts as “frivolous,” denied complainant’s motion for clarification, and entered an order prohibiting complainant from filing further documents or motions.
- In Suit 1, the judge appointed the “son of a close friend and favored colleague” as co-lead claimants’ counsel and appointed a “close friend and favored colleague” as claims administrator.
- In Suit 1, the judge engaged in improper ex parte communication and colluded with two attorneys serving as co-lead claimants’ counsel, the claims administrator, and a prior claims administrator to “inflate the amount of compensation received by some [Suit 1]

plaintiffs . . . in order to induce the remaining [Suit 1] plaintiffs” to settle, and to structure the entire . . . scheme to “maximize judicial efficiency and/or their compensation in exchange for limiting the liability of [the principal defendant].”

To the extent that these 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, the allegations of conflict of interest (personal friendships) in appointing co-lead claimants’ counsel and the claims administrator, collusion, improper motive, and ex parte communication 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 alleges that “in order to ensure as many claims were denied and cases dismissed *as efficiently as possible*,” the judge intentionally delayed for 9 ½ years his rulings dismissing Suits 2-4. Complainant offers no evidence of this alleged motive other than his generalized complaints about the overall Suit 1 claims process, and the allegation 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.

Complainant also asserts that the judge treated him in an “egregious and hostile” manner by making the following remarks, and taking the following actions, in hearings and opinions in Suit 1:

- In an Order & Reasons (sanctioning complainant), the judge colorfully stated that by not suing [the principal defendant], [Complainant] foreclosed his clients’ chances of recovery.

- In an order denying complainant’s motions to recuse, the judge referred complainant to the Clerk of the District Court for consideration of potential sanctions.
- In an order awarding attorneys’ fees to class counsel, the judge denigrated objectors to that award as solely trying to extract more money from the settlement.<sup>1</sup>

In *Liteky v. United States*, 510 U.S. 540, 555-556 (1994), the United States Supreme Court 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.” The judge’s comments appear well within the bounds of permissible expression under *Liteky*, and these allegations therefore are subject to dismissal as frivolous 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.



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Priscilla R. Owen  
Chief United States Circuit Judge

January 4, 2022

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<sup>1</sup> A review of that order shows that the judge was quoting the brief of the fee petitioners’ counsel, although he then expressed agreement with the quote.

**FILED**

March 4, 2022

Lyle W. Cayce  
Clerk

# Before the Judicial Council of the Fifth Circuit

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Complaint Number: 05-22-90003

Petition for Review by [REDACTED]  
of the Final Order Filed January 10, 2022,  
dismissing the Judicial Misconduct Complaint against  
[REDACTED]  
[REDACTED]  
Under the Judicial Improvements Act of 2002.

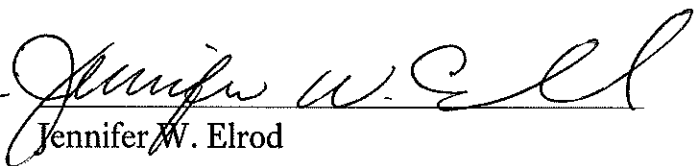
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## ORDER

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 January 10, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

March 2, 2022  
Date

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