

FILED

May 20, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90056 and 05-22-90057

MEMORANDUM

Complainant, a pro se litigant, has filed a convoluted complaint alleging misconduct by the two subject United States District Judges.¹

Rule 26 Request

Complainant submits that because she previously “filed a complaint of judicial misconduct against Judge [A],” each member of the Judicial Council for the Fifth Circuit is required to disqualify herself or himself pursuant to Rule 25 of the Rules For Judicial-Conduct and Judicial-Disability Proceedings if “fair participation in this Complaint Process would be compromised . . . by any reason of bias or prejudice.” Complainant requests that if all Judicial Council members disqualify themselves, the instant complaint be transferred to the Judicial Council of another Circuit.

Rule 26 provides that “[i]n exceptional circumstances, the chief judge or the 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.” The commentary to Rule 26 lists the following examples of “exceptional circumstances”:

¹ In response to the Clerk’s request for clarification of complainant’s initial complaint against Judge A and Judge B, complainant returned a separate complaint against each judge. However, because the two complaints allege misconduct by both judges, they are construed as a consolidated complaint.

- in the case of a serious complaint where there are multiple disqualifications among the original judicial council,
- where the issues are highly visible and a local disposition may weaken public confidence in the process,
- where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate,
- or where a complaint calls into questions policies or governance of the home court of appeal.

A review of the underlying proceedings and associated appeals suggests no basis for disqualification of multiple Judicial Council members and, in the absence of any other “exceptional circumstance,” the request to ask the Chief Justice to transfer the complaint is DENIED.

Allegations

Complainant complains that in a “fraudulent Order of Dismissal” entered in March 2016 in Case 1 (filed in 2014), Judge A “knowingly misstated things that were not made by me” during hearings examining whether complainant had intentionally provided false information on an application to proceed in forma pauperis [“IFP applications”], “required me to report other matters that I [was] not required to disclose,” and erroneously and prejudicially stated complainant had a history of filing frivolous, vexatious, and abusive lawsuits.²

Complainant further alleges that Judge A “falsely alleged . . . for his own personal, biased and prejudicial reason,” that the presiding judge in a 2013 case had found that her claim of sexual harassment against a state judge was frivolous. However, this allegation is clearly contradicted by the record which shows that Judge A referred to the 2013 case in discussing whether complainant had intentionally filed “virtually identical” IFP applications

² Although an amended order was entered in April 2016, complainant’s allegations are explicitly aimed at the March 2016 order. A comparison of the orders shows that the findings and statements at issue are identical.

omitting certain income in the 2013 and 2014 cases. In a related footnote, the judge stated that the 2013 case alleging sexual harassment by a state judge was pending before another district judge.

Complainant complains that in Case 2, Judge B, relying on Judge A's recitation of her litigation history in Case 1, mischaracterized her as "a recreational litigant" to "fraudulently attack my credibility," "integrity," and "to obstruct justice." She further asserts that in an unspecified order, the judge "insinuated that I [was] a snitch against the Defendants or a dike [sic] or lesbian Woman. While I'm not gay, Judge [B] has a huge history of treating such persons with huge hate and dislike before the Court." A review of all orders entered by Judge B does not support a finding that any such insinuations were made, and complainant provides no evidence in support of the judge's allegedly "huge history" of animus towards members of the LGBTQIA+ community.

In Case 3, a magistrate judge granted complainant's IFP application. Complainant complains that the defendants' motion for reconsideration of her IFP status was "based upon the inaccuracy of Judge [A's March 2016] decision and other fraudulent and biased misconduct towards me in [Case 1]." She further complains that in dismissing her lawsuit, Judge A "deliberately agreed with [defense counsel's] frivolous misrepresentations" and ignored "the Evidence, Rules of the Court and Case Law."

Complainant claims that in Case 4, Judge A granted her IFP application "for [a] derogatory and joking reason," i.e., "he had previously held that the alleged dishonesty he unearthed in [Case A was] substantial." She further complains that a show cause order entered in May 2021, was "fraudulent" because Judge A again recited her extensive history of frivolous litigation in federal and state courts. Complainant also protests that in the orders denying her motion for sanctions and dismissing her claims with prejudice, Judge A made "personal derogatory comments toward[s] me," i.e., commenting on the "utter poverty" of her claims was an improper "joke

. . . based upon my socioeconomic status as well as sexuality . . . to state that I should have shown intimate interest in the [defendant-college's] instructor.” In addition, complainant alleges that in dismissing her claims that the defendants had subjected her to “unwanted sexual harassment and derogatory conduct,” Judge A ignored the evidence, “intentionally . . . allow[ed] the Defendants to escape culpable misconduct,” and thereby “convey[ed] [the] personal insulting and degrading attitude that he has towards me or women in general that constitutes gender[-]based bias, socioeconomic status harassment and humiliating jokes towards me.”

Finally, complainant asserts that the judges: engaged in “impermissible Extrajudicial activities” (i.e., “kept track” of her state and federal litigation “for their own evil-wicked self-interested and corrupt purpose”); deliberately misrepresented the nature of her claims “as a practical joke” and “for oppressive reasons”; and, inserted “their own personal derogatory opinion[s] that the cases involving me lack merit because they feel that I am a copy after the other [musical artist with a similar name] or they do not think I am is [sic] sexy at all or as sexy as the other Musical Artist,” and they “exact[ed] revenge towards me as well as conspired to use me improperly towards the other Musical Artist.”

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). To the extent that certain allegations are clearly contradicted by the record or are nonsensical, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations of bias, personal animus, socioeconomic discrimination, gender discrimination, and other improper conduct 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.”

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 third complaint to be dismissed as merits-related, frivolous, and conclusory under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). 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.

/s/ Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

May 18, 2022

FILED

June 9, 2022

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Numbers: 05-22-90056 and 05-22-90057

Petition for Review by [REDACTED]
of the Final Order Filed May 20, 2022,
dismissing the Judicial Misconduct Complaint against

[REDACTED]
and [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 Richman, filed May 20, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

June 7, 2022
Date

Jennifer W. Elrod
Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit