

FILED

April 16, 2025

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-25-90041

IN RE COMPLAINT OF JUDICIAL MISCONDUCT UNDER THE JUDICIAL IMPROVEMENTS ACT OF 2002.

ORDER AND MEMORANDUM OF REASONS

Complainant, a pro se litigant, has filed a complaint alleging misconduct by a United States Circuit Judge. Pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, consideration of this matter has been assigned to me.

Complainant's complaint against a United States district judge was transmitted to the subject judge for consideration pursuant to Rule 25(f). The complaint was dismissed as merits-related, frivolous, and conclusory under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant filed a petition for review pursuant to Rule 18 and an Appellate Review Panel of the Judicial Council affirmed the judge's dismissal order. Complainant was notified that the law provides for no further review of an unfavorable decision.

Public Remarks Disparaging the Complaint Process

Complainant complains that the day after her complaint was transmitted to the judge for consideration, the judge made public remarks "express[ing] deep discontent with the judicial misconduct [complaint] process, disparaging its mechanisms, procedures, and complainants." She further asserts that the judge made "disparaging remarks regarding the American Bar Association (ABA) and the American Inns of Court (AIA) [sic] as 'spineless entities

incapable of meaningful change’ and identified herself as a ‘defender of judges’ regardless of their conduct or appointment.” Complainant concludes that these remarks “demonstrate a dismissive attitude toward the judicial misconduct complaint process and a bias in favor of protecting judges from accountability,” and thereby undermine public confidence in the fairness, impartiality, and adequacy of the judge’s review of complaint matters generally and the judge’s review of Complainant’s complaint specifically.

The remarks at issue were made at a legal conference where the judge participated in a panel discussion on the independence of the judiciary. A review of the recording of the panel discussion shows that, contrary to Complainant’s allegations, the judge did not “disparage” all complainants or the complaint process or defend all subject judges “regardless of their conduct or appointment.” The judge’s remarks were confined to her perception that the complaint process is sometimes “exploited” to attack the reputations of judges, her opinion that the American Bar Association and the American Legal Institute should publicly defend the subject judges in those situations, and her concern that judicial councils should strictly adhere to the complaint procedures.

Therefore, these comments do not amount to judicial misconduct, and this aspect of the complaint is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to create an inference that misconduct has occurred.”

To the extent that Complainant complains that the judge did not adequately review her complaint against the district judge, and the remarks evince “a conflict of interest” such that the judge should have recused herself from considering the complaint, the allegations relate directly to the merits of those decisions and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). Judicial misconduct proceedings are not a substitute for the normal complaint review process.

Pattern of Controversial Conduct

Additionally, Complainant submits that there should be a “thorough investigation” into whether the judge’s “documented history ... of controversial conduct” constitutes evidence of misconduct. In support, Complainant cites the following examples of allegedly improper conduct:

1. *“Inappropriate comments regarding race and ethnicity, as evidenced by a ... complaint alleging racially biased remarks.”*

The judicial council which considered the complaint at issue found no evidence of misconduct by the judge, and the decision was affirmed by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States. Because this example has already been considered in a prior complaint, any further complaint regarding those comments is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

2. *“Publicly berating a colleague during oral arguments ..., behavior that was widely condemned as unprofessional,” and “[r]esistance to reforms aimed at increasing transparency, such as requiring financial disclosures from organizations filing amicus briefs.”*

Neither of these examples is evidence of partiality, and any assertion that they constitute misconduct is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to create an inference that misconduct has occurred.”

An order dismissing the complaint is entered simultaneously herewith.



JERRY E. SMITH
United States Circuit Judge