

FILED

March 6, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90105

MEMORANDUM

Complainant, a civil litigant, has filed a complaint alleging misconduct by the subject United States District Judge in complainant's employment discrimination case.

Complainant recounts that her case was originally assigned to a United States District Judge who died five days before a scheduled pretrial hearing. She notes that two days before the scheduled hearing, the subject judge, "who was not familiar with the case," determined that oral argument was unnecessary and issued a 23-page ruling granting the Defendant's motion for summary judgment.

Complainant protests that she was denied due process, in support of which she submits:

- The judge never communicated with complainant or her attorney prior to entering the adverse ruling.
- By failing to hold the scheduled pre-trial hearing, the judge denied complainant the opportunity to "tell the details and introduce evidences [sic] to the court that would have made a difference if the trial was heard by a jury."
- The judge's "hasty ruling" might have been due to "the overload of cases during this time."

Complainant alleges further that the judge's conduct violated FED. R. CIV. P. 63 which provides:

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a non-jury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden.

Because the judge did not take over the case in the middle of "a hearing or a non-jury trial," and did not hold the scheduled pretrial hearing, the allegation that Rule 63 was violated appears to be misplaced.

Complainant also alleges that the judge "shared incorrect and misinformation [sic] in a slanted-written [sic] article ... [that] was defamatory and was written in support of the defendants." There is no indication that the judge was interviewed about the case, and it appears that the journalist directly quoted or paraphrased key findings from the judge's ruling granting the Defendant's motion for summary judgment.

In addition, complainant reports that "after googling [the judge], I discovered a picture of her and a well-known politician," i.e., a former United States President. Claiming that "it is no secret how this politician feels about African Americans," complainant asserts that the judge "undoubtedly share[s] similar views" and "I knew immediately it would be difficult as an African American female to achieve equity and to receive a positive outcome in this case." She also proposed that the photo constitutes evidence that the judge engaged in partisan political activity in violation of the Hatch Act.

A cursory internet search shows that the woman in the photograph is a former United States Congresswoman, not the judge.

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 that the judge “shared misinformation” with a journalist, is biased against African American litigants, or engaged in partisan political activity, 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.

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman

Priscilla Richman
Chief United States Circuit Judge

March 5, 2023

FILED

July 19, 2023

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-22-90105

Petition for Review by [REDACTED] regarding
Complaint of Misconduct and/or Disability Against
[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

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 March 6, 2023, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

July 18, 2023
Date _____
Jennifer W. Elrod
Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit