

FILED

January 19, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90033

MEMORANDUM

Complainant, a pro se plaintiff, has filed a complaint alleging misconduct by the subject United States District Judge in complainant's 42 U.S.C. § 1983 proceeding.

Complainant alleges that the judge is biased against plaintiffs in civil cases. For example, complainant claims that "in his final order," the judge "cited with disdain that [complainant] had brought many other cases to the courts in the past." A review of the record indicates that the only reference to complainant's litigation history was in a magistrate judge's Report and Recommendations, which the judge adopted, noting complainant's "extensive history of filing meritless suits." In another example, complainant alleges the judge demonstrated bias by accepting the Report and Recommendations, in which complainant claims the magistrate judge improperly and sua sponte raised a defense on behalf of the 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, any assertions of bias 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 also alleges that the judge gave “the appearance of bias in favor of defense attorneys” because the judge accepted an award from a local bar association. The annual award honors a member of the bar association who has contributed to the legal profession and community. In support of his claim, complainant submits that: (a) the “prestigious award” was given to the judge by “defense attorneys”; (b) defense counsel in the underlying case are members of the bar association; and (c) the judge’s remarks at the award ceremony—regarding the effects of petulant conduct in society and encouraging respect and professionalism in society in general and in the legal community—evidence his bias against plaintiffs in civil cases.

Advisory Opinion 46, Guide to Judiciary Policy, Vol. 2B, Ch. 2, § 220, provides that judges who have achieved a preeminence prompting public recognition should ordinarily be able to accept such honors, but the judge should first consider whether the award would raise the appearance of impropriety or partiality. For example, an award should not be accepted from an organization whose public image embodies a clearly defined point of view on controversial legal, social, or political issues. Neither should an award be accepted from an organization that is apt to come before the courts as a litigant. Moreover, the judge should be cautious if the award is presented in conjunction with a fundraising event and should consider whether the judge’s presence is being employed as a device to promote publicity or ticket sales.

Complainant’s allegation that the judge treats, or may be perceived to treat, members of the bar association more favorably because he received an award from the organization is conclusory and wholly unsupported. There is no indication, nor has complainant presented any evidence, that the judge’s acceptance of the award affected his impartiality in complainant’s case or in any other case. There is nothing to suggest that the bar association takes public views on controversial legal, social, or political issues; that the bar

association is apt to come before the court as a litigant; or that the award was given in connection with a fund-raising event or to promote ticket sales.

Moreover, contrary to complainant's suggestion, membership of the bar association is not limited to defense attorneys. The bar association is a non-profit organization open to all attorneys practicing law in a certain geographical area and has both plaintiff and defense attorney members. Lastly, the judge's remarks at the award ceremony are not evidence of bias against plaintiffs.

Complainant's conclusory assertion that the judge was biased in favor of the defendant in the underlying case or defendants generally because the judge received an award from the local bar association, of which defense counsel are members, is 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." Likewise, complainant's allegation that the judge's remarks at the award ceremony demonstrate bias is also 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.



Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

January 10, 2024

FILED

February 28, 2024

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-24-90033

Petition for Review by [REDACTED]

Regarding Complaint of Misconduct and/or Disability Against

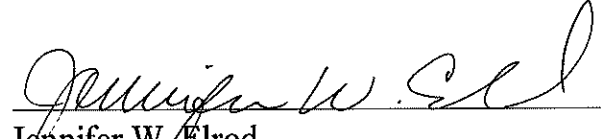
[REDACTED]
Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

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 Richman, filed January 19, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

02/27/2024
Date


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