

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Number: 05-16-90070

U. S. COURT OF APPEALS
FILED
APR 14 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM


Complainant, an attorney, has filed a judicial misconduct complaint against the subject United States District Judge who presided over a criminal trial in which complainant represented the defendant. He complains that the judge rescheduled the sentencing hearing to an hour later than originally scheduled without consulting him as to his availability. Complainant further alleges that the judge “appeared unaware of the entire case and my objections during the proceeding. She was reading court documents during the entire hearing. The judge seemed to misunderstand the indictment and the charge and the objections to the presentence investigation report.”

These allegations relate directly to the merits of the judge’s decisions, and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also complains that the judge “acted inappropriately, rudely, and contemptuously towards me” during the sentencing hearing. For example, the judge “glared at” and rebuked him for attempting to provide information, in response to her inquiry, about changes in his client’s physical or mental health since entering a guilty plea. She also chastised him for: looking at his watch; shuffling his papers too close to the microphone; and, marking a copy of an exhibit. In addition, complainant asserts that the judge engaged in “insulting, disrespectful and odd behavior” by asking him if he knew the rules of evidence and whether he was retained or appointed, and did so “to upset me so it would be difficult to argue my objections, make me appear to be incompetent or inept to my client and his family, to incite me to get angry, and to interfere with the attorney-client relationship.”

In Liteky v. U.S., 510 U.S. 540, 555-556 (1994), the U.S. 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. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune."* These allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge

April 7, 2016