

FILED

November 14, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90089

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in a pending civil proceeding. Complainant further asserts that the magistrate judge is suffering from “a cognitive impairment.”

Complainant alleges that in a Report and Recommendations the magistrate judge stated erroneously and prejudicially that Mr. A “is the father of” complainant’s granddaughter. Characterizing the Family Court’s “judicial decree of [Mr. A’s] unsubstantiated claims of paternity” as “arbitrary and capricious,” complainant recounts that she filed pleadings advising the court that “[t]here is no proof whatsoever” that her granddaughter “is the biological child of [Mr. A].” Complainant submits that the magistrate judge’s “explicit, unverified, uninvited, and unnecessary declaration” of Mr. A’s paternity demonstrates that:

- The magistrate judge “has personal knowledge of disputed evidentiary facts concerning the proceedings and has engaged in ex parte communications about this fact.”
- The magistrate judge failed to report the ex parte communication and thereby violated Canons 3(A)(4) and 3(B)(6) of Code of Conduct for United States Judges.

- The statement is a “prejudicial ratification of” the Family Court’s improper decree and “binds” the magistrate judge “to the fraud being perpetrated upon the courts by the Defendants’ conspiracy to avoid paternity testing.”
- The magistrate judge “gift[ed] the defendants with the advantage of her judicial backing and the prestige of her judicial position . . . in advancing their unlikely and contested claims.”

A review of the record shows that it includes the Family Court’s judgment stipulating that Mr. A is the “natural father” of the child and various defense filings referring to Mr. A as the child’s father.

To the extent that complainant is complaining that the magistrate judge erroneously accepted the Family Court’s judgment or the defendants’ filings referring to Mr. A as the child’s father, and thus conferred the “prestige of office” on the defendants’ claims, the allegation relates directly to the merits of a decision or procedural ruling and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the assertion that the magistrate judge relied on anything other than the record—i.e., engaged in *ex parte* communication with unspecified defendants—in referring to Mr. A as the child’s father, the conclusory assertion 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.”

Complainant further alleges that the district court record is “litter[ed]” with the magistrate judge’s “disparaging remarks toward[s] [me] and are magnified by an accusatory, disdainful tone.” Complainant provides two examples of this alleged misconduct.

- (1) In a footnote, the magistrate judge noted that while complainant might have filed documents in the record that referred to the minor child by her full name, the Report and Recommendations would refer to the child by her initials to protect her identity. Complainant submits that the magistrate judge “intentional[ly]”

and “malicious[ly] . . . vilifi[ed] [me], implying that I endangered my granddaughter.”

A review of the record indicates that while the parties’ motions and pleadings referred to the minor child by her initials, complainant filed exhibits which included the child’s full name.

(2) Complainant contends that the magistrate judge “shamed” and “threatened” her with Rule 11 sanctions, conduct which complainant describes as “overkill, beneath the dignity of the Court, and casts the judiciary in a pall of unfavorable light.” Complainant appears to be referring to a footnote in which the magistrate judge cautioned complainant that she is subject to the requirements of Fed. R. Civ. Proc. 11, which subjects a party to sanctions for asserting a position in a pleading that does not have an adequate legal and/or factual basis:

The conclusory assertion that the magistrate judge’s statements in the footnotes were aimed at intentionally disparaging, shaming, or threatening complainant 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.”

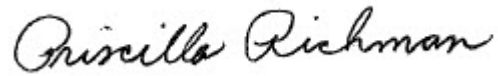
Finally, complainant submits that the magistrate judge’s “unreasonable determinations of fact” and “unreasonable application[s] of established federal law” constitute evidence that the magistrate judge is suffering from a “cognitive impairment.”

To the extent that the allegation relates directly to the merits of the magistrate judge’s decisions or procedural rulings, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the assertion appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence

to raise an inference” that the magistrate judge is suffering from a cognitive impairment.

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

Chief United States Circuit Judge

November 10, 2022