

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JAN 04 2017
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-17-90014

MEMORANDUM

Complainant, a bankruptcy petitioner, has filed a judicial misconduct complaint, and two supplemental complaints, against the subject United States Bankruptcy Judge. Prior to taking the bench, the judge represented complainant in a 1999 bankruptcy proceeding. Without presenting evidence in support of the claim, complainant now alleges that the judge “threatened a long time ago to get me back if I did not pay him for his services in 2000” and, contends that the judge “did get me back” by having “[me] arrested and beaten by U.S. Marshals ... without notice.”

A review of the records shows that complainant’s failure to comply with numerous court orders provided ample grounds for the judge to order his arrest, and there is simply no evidence that the judge instructed the U.S. Marshals to allegedly “beat” complainant.

To the extent that these allegations relate directly to the merits of the judge’s decision to issue a bench warrant, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertions of retaliatory conduct are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant states that in the course of the 1999 bankruptcy proceeding, he disclosed to his then-attorney that he suffered from mental illness. He complains that despite knowing about the mental illness, the judge “brought me to court [for the show cause hearing] unmedicated in shackles [sic], ... did not never provide me with an attorney nor did he advise me of my rights at any point, ... improperly interrogated me without counsel and has referred the bankruptcy case to the U.S. Attorney’s Office.” He

further protests that the judge “made a big issue over” an incorrect Social Security number listed on medical records complainant filed with the court, and “used this to essentially call me a liar, demean or denigrate my mental illness.” Complainant submits that the judge’s conduct violated the Americans with Disabilities Act.

To the extent that the allegations relate directly to the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

A review of the audio-recording confirms that the judge questioned complainant at length about discrepancies between his pleadings (including the incorrect Social Security number) and his testimony, and ultimately concluded that complainant’s testimony was not credible. The judge’s tone of voice was stern, but he did not “demean or denigrate” complainant in any way.

The Supreme Court of the United States has held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant ... But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings” Liteky v. United States, 510 U.S. 540, 551 (1994). The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant complains the judge should have recused himself “since he was my former lawyer and did NOT want the lawyer to file the bankruptcy.”¹

The allegation relates directly to the merits of the judge’s decisions not to recuse himself *sua sponte* or in response to complainant’s recusal motions, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant states that the appeal he filed in July 2016 regarding the judge’s contempt order docketed in the district court was styled with an incorrect case name, and he received no notices in that appeal. He appears to contend that the styling of the appeal and the lack of notice constitute evidence of misconduct by the judge.

¹The undersigned notes that the judge referred complainant’s first recusal motion to the United States Chief Bankruptcy Judge for consideration. Following a hearing, the Chief Judge denied the motion.

The styling of the appeal and the mailing of notices was the responsibility of the district court clerk's office, not the subject bankruptcy judge, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant complains that the judge improperly continued ruling in the bankruptcy proceedings while appeals were pending.

The allegation relates directly to the merits of the judge's decisions, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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.


Carl E. Stewart
Chief Judge

December 28, 2016