

MAR 21 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERKIN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Complaint Numbers: 05-17-90064

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## MEMORANDUM

Complainant, a *pro se* litigant and former attorney, has filed a judicial misconduct complaint against the subject United States Circuit Judge.

Complainant challenges the propriety of the judge's January 2016 order denying his request for expedited consideration of a judicial misconduct complaint complainant submitted for filing in July 2015, and ordering that consideration of that complaint be held in abeyance pending the disposition of complainant's appeal, including any petition for a writ of certiorari. Complainant also challenges the judge's April 2016 order denying his motion to rescind the abatement order.

Complainant alleges that the judge's orders "establish a profound appearance of indisputable impropriety, prejudice, bias, favoritism, fraud and deceit ... overt 'corruption' and/or 'cronyism'." He further asserts that the judge "engaged in manifest disregard for the mandatory provisions" of 28 U.S.C. §§ 351-364 and of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant also contends that the judge's "requirement for abatement ... reflects a lack of judicial temperament and a mean, vicious and vindictive *ad hominime* argument against [my] *pro se* Complaint rather than answering [my] Complaint by Rule of Law, intellect, or reason. He submits that "a reasonable inquiry would conclude that the judge's "honesty, integrity, temperament, or fitness to serve as [a judge]... is impaired or nonexistent."

Contrary to complainant's assertions that the judge's order of abatement demonstrated "manifest disregard for the mandatory provisions" of the laws and rules governing judicial misconduct complaint proceedings, the Commentary on Rule 3 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

... there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly

deferred by the chief judge until the appellate proceedings are concluded in order to avoid, *inter alia*, inconsistent decisions.<sup>1</sup>

As explained in the judge's January 2016 order, where a judicial misconduct complaint involves pending litigation, it is customary for consideration of a complaint to be held in abeyance because of the possibility of affecting the litigation.

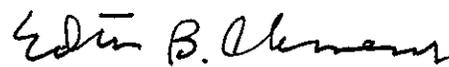
To the extent that the allegations relate directly to the merits of the judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of impropriety, bias, fraud, corruption, and lack of judicial temperament are insufficient to support a finding of judicial misconduct and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant seeks the judge's disqualification from considering the instant complaint, the request is denied as moot.

To the extent that complainant seeks the judge's disqualification from considering the abated complaint, and also seeks the transfer of the abated complaint to another Judicial Circuit pursuant to Rule 26 of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, the requests are denied without prejudice to complainant's re-urging them when he notifies the Clerk of the disposition of the pending appeal, including any petition for a writ of certiorari.

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.



Edith B. Clement  
Circuit Judge

March 20, 2017

<sup>1</sup> Commentary to Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings, Guide to Judiciary Policy, Vol. 2E, Ch. 3, at 9.