

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

AUG 01 2017

**FIFTH CIRCUIT
LYLE W. CAYCE, CLERK**

Complaint Number: 05-17-90065

MEMORANDUM

Complainant, an attorney, has filed a judicial misconduct complaint against the subject United States District Judge regarding two civil proceedings.

- **Case 1**

The judge approved a settlement agreement reached by the plaintiff (the mother of a minor who sustained injuries while being held in a detention facility) and the defendants (including a law enforcement officer who allegedly injured the minor through the use of unauthorized force). Complainant, who represented the officer in a subsequent lawsuit alleging unlawful termination arising out of an investigation of his conduct towards the minor [Case B], asserts that by approving the settlement agreement, the judge “rewarded a criminal for wrong doing.” He appears to further complain that the judge denied the officer’s cross claim.

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

- **Case B**

Complainant states that, “[i]ronically,” the officer’s subsequent lawsuit was also assigned to the judge’s docket. The undersigned construes this as an allegation that the judge somehow interfered with the assignment Case B by the clerk of the district court, and did so out of bias against the plaintiff.

Complainant further contends that the judge violated Rule 56 of the Federal Rules of Civil Procedure and the plaintiff's right "to true and meaning [sic] access to the court" by holding that he could not file a motion for summary judgment until after the Court ruled on the defendants' pending motion to dismiss.

To the extent that the allegation relates directly to the merits of the judge's decision regarding the timing of the filing of the motion for summary judgment, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions that the judge engineered the assignment of the case to his docket and intentionally denied the plaintiff's due process rights lack sufficient evidence to raise an inference that misconduct occurred, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

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.

The undersigned notes that this is attorney-complainant's second judicial misconduct complaint challenging a judge's rulings and making unfounded allegations of misconduct. Complainant is cautioned that the filing of further merits-related, unsupported, or frivolous judicial misconduct allegations might constitute an abuse of the judicial misconduct complaint process resulting in the suspension of his right to file further complaints. See Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.

July 29, 2017


Carl E. Stewart
Chief Judge