

OCT 17 2017

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

Docket Number: 05-17-90117

M E M O R A N D U M

Complainant, a *pro se* bankruptcy petitioner, has filed a judicial misconduct complaint against the subject United States Bankruptcy Judge.¹

Complainant complains that during a March 2015 hearing regarding her attorney's motion to withdraw, the judge unfairly admonished "[me] for losing [my attorney]. I don't think I am the first person to be terminated by an Attorney." She further protests that during a September 2015 show cause hearing as to why complainant should not be held in contempt for failure to comply with a sanctions order, the judge admonished her for not understanding the procedure for seeking a stay of the sanctions ruling, and also "screamed at, admonished and threatened [me] for telling and proving the truth."

A review of the audio-recording of the September 2015 hearing demonstrates that, while the judge's demeanor was stern, she was courteous and addressed at length complainant's misinterpretations of court rules and orders. The judge did not "scream at" the complainant, and the only "threat" appears to have been the judge's informing complainant that continued failure to comply with the sanctions order might lead to her imprisonment for civil contempt.

¹ The undersigned notes that complainant's summary of the underlying proceedings, and the allegations of misconduct arising out them, are rife with mischaracterizations of statements made by the subject judge and other judges during hearings, and with misinterpretations of orders entered by the bankruptcy court and by the district court on appeal.

To the extent, if any, that the allegations relate directly to the merits of the judge's decisions in the hearings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging that the judge "screamed at and threatened" her during the September 2015 hearing, the allegation is contradicted by the record and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In other respects, the allegation that the judge demonstrated bias in expressing disapproval of complainant's conduct towards her attorney and her failure to comply with court rules and procedures, the Supreme Court of the United States has also 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*, 510 U.S. 540, 551 (1994). The allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also complains that the judge denied her motion for stay of the sanctions order, and improperly denied a motion addressed to a district judge seeking clarification of the district court's order granting her application to proceed *in forma pauperis* on appeal, an order that complainant had misinterpreted as staying the bankruptcy court's sanctions order.

The allegations relate to the merits of the judge's decisions, including any purported error in ruling on a motion complainant intended for filing in the district court proceeding, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant protests that the judge issued a bench warrant for her arrest after she failed to appear at a show cause hearing. She claims to "have no idea for the reason of this bench warrant," objects that her failure to appear was not her fault (i.e., she was unsure whether the hearing was cancelled and, regardless, she was too ill to attend), and concludes that the judge must have issued the bench warrant in retaliation

after finding out that complainant had submitted the instant judicial misconduct complaint for filing four days earlier.

There is simply no evidence that the judge was aware that complainant was attempting to file a judicial misconduct complaint. Furthermore, statements made by complainant in the instant complaint signed four days before the scheduled hearing demonstrate that whatever confusion she experienced when the hearing was initially scheduled, she knew she was required to appear before the bankruptcy court four days later. The record also appears to show that complainant did not contact the court before, on, or after the hearing date regarding her inability to appear due to illness.

To the extent that the allegations relate directly to the merits of the judge's decision to enter the bench warrant, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation of retaliation is so lacking in indicia of reliability that no further inquiry is warranted, and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that "someone in the bankruptcy court sent all [my] bankruptcy papers to [my] Dr. when he was not and never has been a creditor of [mine]." Based on the physician's nurse confirming that the papers were mailed by "the Clerk of the Court," complainant proposes that the documents were mailed at the judge's direction "to embarrass me since this Dr. was my client."

The clerk of the bankruptcy court is responsible for transmitting case-related documents to parties and creditors. The record shows that complainant listed a medical provider as a creditor in Schedule F of her bankruptcy petition. If the clerk sent the documents to that creditor as required, or erroneously sent them to another medical provider, there is no evidence to support complainant's contention that the judge played any role in that administrative task. The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also complains that despite providing proof that that the Chapter 13 Trustee's attorney falsely claimed that she failed to provide sufficient documentation in support of her bankruptcy petition, the judge granted the Trustee's motion to dismiss the case. She surmises that "no matter what [I] filed proving [my] case to [the judge] it was as though it was never read. Whatever defendant filed was granted. ... No doubt defendant received special treatment and favors. [I] suspect there has [sic] many ex parte meetings with defendant and others leaving [me] out of those meetings."

In addition, complainant protests that the judge "showed partiality to the attorneys, was bias[ed] and discriminated against me." In support of this claim, she notes that a copy of the bench warrant was mailed to counsel for the respondent-company, and she objects this was improper because the attorney allegedly "beat me up so badly that I have to have surgery." She further argues that providing a copy of the bench warrant to the respondent was improper because "arresting me should not have any bearing with [the respondent]. The outcome of my case and the fact this is a very lucrative company, is enough to question the relationship between this company and the court." Complainant proposes that based on this purported relationship with the respondent company and/or favoritism towards counsel, the judge should have herself *sua sponte*. She also speculates that the judge might be "determined to keep me down so this company can keep its money or is this company paying [the judge] to keep me down."

Finally, complainant alleges that the judge's treatment of her throughout the proceedings "was abusive, harassing and discriminatory," and she concludes that the judge's "opinion may have been formed prior to my filing bankruptcy."

To the extent that these allegations relate directly to the merits of the judge's decisions, including the implied decision not to recuse *sua sponte*, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of *ex parte* communication, bias, discrimination, conflict of interest, extrajudicial bias, and bribery are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal as frivolous 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.

This is complainant's third judicial misconduct complaint to be dismissed as merits-related, and/or conclusory, and/or frivolous. Complainant is WARNED that should she file a further merits-related, conclusory, or frivolous complaint, her right to file complaints may be suspended and, unless she is able to show cause why she should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart

Chief Judge

October 11, 2017