

JAN 10 2019

FIFTH CIRCUIT

LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Docket Number: 05-18-90033

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## M E M O R A N D U M

Complainant, a federal prisoner and suspended attorney, has filed a judicial misconduct complaint against the subject Senior United States District Judge, who presided over complainant's criminal trial. Complainant asserts that in the "early to mid 2000's," the judge improperly lobbied a county judge to secure a tax collection contract for complainant's former law firm. Complainant further charged that the judge was biased against him and should have recused himself from complainant's criminal case.

In his complaint and subsequent correspondence, complainant identified various persons as witnesses to the alleged misconduct, and claimed that certain emails, stored on two specific computers formerly in complainant's possession, supported his contentions. The undersigned has conducted a limited inquiry regarding the complaint, as authorized by 28 U.S.C. § 352(a). As detailed below, this inquiry has been unable to corroborate, or to verify the existence of any evidence that would corroborate, any of those contentions.

Complainant identified the following specific items as allegedly providing evidence that the judge used his influence to cause the county judge to refer a tax collection contract to complainant's former law firm:

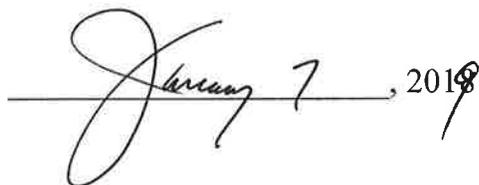
- (1) Complainant alleged that one of the firm's partners testified in the federal criminal trial of a different former county judge, and revealed that "the Firm relied on third party intervention to secure some of its public bid contracts." A review of the transcripts of this trial does not show any testimony by the partner. The presiding judge and Assistant U.S. Attorney also confirmed that the partner did not testify in the trial, or any hearing or other proceeding in that case.

- (2) Complainant stated that emails stored on two specific computers supported his allegations, and said that he had turned these computers over to his defense counsel. The defense counsel, however, denied ever having had possession of the computers, and neither complainant nor the defense counsel was able to provide any further information as to where these computers might be. The defense counsel did have possession of a third computer, which he gave to the Federal Public Defender's office currently representing complainant in appeals. Complainant stated that this third computer was not the computer with the allegedly inculpatory emails on it, and refused permission for the undersigned to examine that computer. Complainant also asserted that the emails in question could be found in the "digital archive" of his former law firm, but a representative of that firm has denied that any such emails are present in the firm's files.
- (3) Complainant alleged that during his criminal trial, the partner "made multiple comments to third parties" that he (the partner) had spoken "at length with [the judge] to ensure his bias" against complainant. When asked to identify the "third parties," complainant named only an attorney who died before the complaint was filed. The only other parties to these alleged comments, the judge and the partner, both denied these allegations. Complainant contended that the record of his trial showed the judge's bias against him, in that the judge allegedly tried to pressure complainant to keep the firm's name from the jury, and then, when complainant refused, stated that complainant was a "mere employee" rather than a shareholder of the firm. A review of the trial transcript indicates that the judge simply appears to be making it clear to the jury that complainant was not a named partner in the firm (which had an unrelated named partner with the same surname as complainant). The fact that the judge did not specify that complainant was a partner (as opposed to an associate) during voir dire does not indicate bias, or provide support for complainant's broader allegations.

(4) The only other witness complainant identified as having knowledge of the alleged scheme for the judge to exert influence on the then-county judge was that county judge. That former county judge denied the existence of any such scheme, and said that in fact, the subject judge was always extremely careful never to discuss politics with the county judge.

In summary, the limited inquiry conducted under 28 U.S.C. § 352(a) was unable to locate any information that would support the charge that the subject judge exerted improper influence on the then-county judge. The inquiry was unable to verify that the alleged emails exist. None of the living witnesses identified by complainant provided any information that would support his contentions, and the only other identified witness is deceased. The relevant court documents (the transcripts of the aforementioned criminal trials) do not support complainant's assertions. Complainant's contentions are therefore incapable of being established through further investigation, and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that complainant asserts that the transcript of his trial itself demonstrates judicial bias, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as lacking sufficient evidence to raise an inference of misconduct.

An order dismissing the complaint is entered simultaneously herewith.

 January 7, 2019

  
Carl E. Stewart  
Chief Judge