

JAN 14 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Number: 05-18-90055

MEMORANDUM

Complainant, an African-American attorney, has filed a judicial misconduct complaint against the subject United States District Judge.

Case A

Complainant alleges that the judge unduly and improperly delayed approving a voucher she submitted under the Criminal Justice Act in June 2017. She further asserts that the judge's delay in approving her voucher demonstrates racial animus. Complainant also states that after she brought the delay to the attention of the chief judge of the district court, the subject judge retaliated by further delaying approving the voucher.

The undersigned notes that the only evidence complainant provides in support of her claim of racial animus is that, "to the best of [her] knowledge," the judge promptly approved vouchers submitted by the "White and Hispanic counsel" who represented co-defendants in the underlying criminal proceeding. A review of CJA vouchers submitted in the case indicates that at the time complainant filed the instant complaint, not all of the vouchers submitted by other counsel had been approved, and complainant requested \$3,000 more than the other attorneys.¹

Case B

Complainant reports that during a show cause hearing to review CJA compensation claimed by several attorneys representing defendants in Case B, she provided a detailed explanation of her work. She protests that despite fully justifying her claims for compensation, the judge not only delayed ruling on the voucher for three

¹ The eight defendants were similarly charged and all pleaded guilty to conspiracy to distribute methamphetamine. Complainant's client pleaded guilty the same day as five other defendants. Her client was sentenced the same day as three co-defendants.

months, but approved “less than 1/3 of the fees for legal services rendered ... No explanation was provided as to the reasons for [the reduction].”

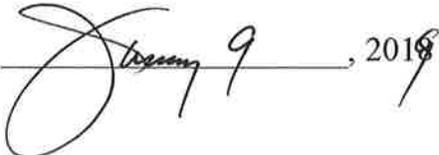
Contrary to complainant’s statement that the judge approved “less than 1/3 of the fees for legal services rendered,” a review of the voucher indicates that the judge approved more than half of the amount she requested. Regarding the assertion that it was improper for the judge to reduce complainant’s compensation with “no explanation,” not only did the judge convene a show cause hearing to discuss complainant’s request and allowed her to submit a revised voucher, a review of the e-Voucher system shows that the judge prepared a 5-page order explaining in detail each reduction, and that order was attached to the approved voucher.

The approval of CJA vouchers is an administrative rather than judicial function. While administrative decisions may involve misconduct, following a limited inquiry conducted under 28 U.S.C. § 352(a), the undersigned finds that there is insufficient evidence to raise an inference that misconduct has occurred regarding either voucher, and the allegations of undue delay, racial animus, and retaliation are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

The undersigned notes that as a lawyer, complainant knows or should know “of the standards for stating a viable claim of judicial misconduct,” and should also be “well aware that any court filing must be based on good faith and a proper factual foundation.” *See In re Complaint of Judicial Misconduct*, 550 F.3d 769 (9th Cir. 2008). Complainant’s complaint, which contains a number of misrepresentations and inaccuracies, falls short of these standards.

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge


Jeremy 9, 2018