

JAN 14 2019

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

Docket Number: 05-18-90077

M E M O R A N D U M

Complainant, a federal prisoner, has filed a judicial misconduct complaint against the subject United States District Judge regarding two proceedings.

2009 Civil Proceeding

Complainant complains that the judge's "thoughtless and undeliberated acquiescence to every request made by the court-appointed receiver and the [plaintiff] is ... evidence of her bias against [me]."

To the extent that the allegation relates directly to the merits of the judge's decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of bias is insufficient to support a finding of judicial misconduct, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

2014 Criminal Proceeding

Complainant protests that the judge should have recused *sua sponte* immediately upon the assignment of the criminal case to her docket because the judge "either knew, or should have known ... that it would be impossible for her to be a disinterested and unbiased judge" in the criminal matter because of her prior knowledge of him from the civil proceeding. He submits that by the time of the judge's allegedly intentionally belated recusal "the prejudicial damage to [my] case and defense had already been done." For example, complainant alleges that the judge committed the following "unethical acts":

- There were purported irregularities in the issuance and execution of arrest warrants, and complainant implies that the judge was either responsible for the irregularities or failed to correct them.

- Noting that arraignment hearings are generally conducted by a magistrate judge, complainant submits that the judge had a malign motive in conducting the arraignment hearing at which he entered guilty pleas.
- The judge’s bias in conducting the arraignment hearing was evident in her failure to “state any reservations or issues with [my] guilty plea or factual resume at, or prior to, [my] entry of [my] plea of guilty.”
- Despite complainant’s “direct request to the Court ... there are multiple ex parte documents which remain sealed in the case.”

Complainant concludes that the judge “was either complicit in and/or prejudicially negligent of or acquiescent to actions directly responsible for prejudice to [my] criminal case.”

To the extent that these allegations relate directly to the merits of the judge’s decisions in the criminal proceeding, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of bias and personal animus lack sufficient evidence to raise an inference that misconduct has 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.

An order dismissing the complaint is entered simultaneously herewith.

January 9, 2018


Carl E. Stewart
Chief Judge