

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

JAN 14 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Docket Number: 05-18-90089

MEMORANDUM

Complainant, a criminal defendant, alleges that the subject United States District Judge's conduct during a motions hearing "was beyond personal and prejudice she's an undercover racist ... her Ora [sic] was just nasty her arrogance was just uncalled for." In support of these allegations, complainant claims that the judge: was angry that the hearing, which was originally scheduled as a sentencing hearing, "was converted to the motion hearing for my counsel to withdraw"; stated that she did not believe complainant's representations about defense counsel's conduct; "told me ... this wasn't going to [buy] time I'm going to be sentenced and I'm going to jail ... she wasn't giving me a new trial"; and "'is to[o] busy gunning for me and trying to imprison me. [She] made it a priority to ask [the magistrate judge]" to convene a hearing regarding withdrawal of counsel, following which the court would promptly schedule a sentencing hearing.

A review of the audio-recording of the motions hearing demonstrates that to the extent that the judge stated that she found complainant's claims against defense counsel to be without merit, expressly surmised that complainant appeared to be trying to delay sentencing and imprisonment, and emphasized that any argument about ineffectiveness of counsel could only be raised postconviction, the judge displayed neither "arrogance" nor anger.

Complainant further asserts that the judge "... has sided with the prosecutor ... and [defense counsel]," and when "someone else came forward and told [defense counsel] they committed the crime, ... [the judge] didn't want to hear it." She also contends that the district court lacked jurisdiction over the criminal proceeding.

To the extent that complainant complains about the judge's demeanor during the motions hearing, in Liteky v. U.S., 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court

held that judicial bias is not established by a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.” The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant alleges that the judge expressed negative opinions about her representations to the court, in Liteky the U.S. Supreme Court 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. at 551. The allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that the allegations relate directly to the merits of the judge’s decisions, including exercising jurisdiction, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of racial bias and personal animus are insufficient to support a finding of judicial misconduct, 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, 2019


Carl E. Stewart
Chief Judge