

JAN 16 2019

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

Docket Number: 05-18-90096

M E M O R A N D U M

Complainant, a licensed registered nurse employed in the Federal Occupational Health Clinic located in a United States Courthouse, has filed a judicial misconduct complaint against the subject United States District Judge.

Complainant states that on June 4, 2018 he arrived at the judge's courtroom within approximately four minutes of receiving two calls asking him to respond to a medical emergency. He claims that as he entered the courtroom to attend to the "apparent emergency," he was "shocked" when the judge stopped him and, before directing him to the defendant requiring medical attention, asked what complainant had been doing to take "so long to respond to this emergency," and admonished him that "if this was an actual emergency this person would have died." He further describes feeling "extremely belittled and quite embarrassed" by the judge's remarks, and reports that the resulting anxiety made "it extremely difficult to perform [his] duties."

Complainant complains that the judge's conduct "was very rude, unprofessional, and shocking," submits that her immediate concern should have been for the individual who needed medical treatment, and contends that the judge "should have taken me aside, in private, then inquired about her concerns" after he treated the defendant.

I have conducted a limited inquiry pursuant to 28 U.S.C. § 352(a). The transcript of the relevant portion of the proceeding indicates that complainant entered the courtroom approximately nine minutes after the defendant fell and the judge asked the U.S. Marshal to call for medical assistance. It appears that in the interim, the defendant recovered, fell a second time, and recovered again. When complainant arrived, the judge admonished him that

“[i]f we had a real crisis going on here, sir, you would be too late,” and asked if complainant could “hurry it up” when he was called to a courtroom.

Complainant’s insistence that the judge could have handled the situation more diplomatically is indicative of his impression that he arrived in the courtroom within four minutes of being summoned, and his embarrassment at being chastised in a public setting. However, the transcript indicates that the judge’s rebuke was mild, and given the length of time between the judge’s asking the U.S. Marshal to call for medical assistance and complainant’s arrival, her expression of frustration or annoyance does not appear to have been unreasonable.

In Liteky v. U.S., 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court acknowledged that federal judges occasionally express “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” from a finding of judicial bias or, as in the instant situation, judicial misconduct. The complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

 2019


Carl E. Stewart
Chief Judge