

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

Docket Numbers: 05-19-90056 through 05-19-90059

MAR 11 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a pro se litigant, has filed a 48-page judicial misconduct complaint against the three subject United States District Judges and the subject United States Magistrate Judge regarding three separate proceedings.

The Clerk originally received complainant's complaint in July 2016 and notified her that consideration by the undersigned would be abated until after the final disposition of overlapping allegations pending in Case 3. In an order entered on January 4, 2017, the undersigned denied complainant's motion to rescind the abatement. Complainant now requests that her complaint be transferred to another judge for consideration because, in denying her motion to rescind abatement, the undersigned "failed to highlight the gravity of [the] allegations ... and failed to address a request for limited [exception to] confidentiality."

The request is DENIED.

I. Judge A

Mistreatment of elderly pro se litigant

Complainant alleges that she witnessed a hearing in which Judge A "failed to acknowledge" or "accommodate" the hearing difficulties of an elderly pro se plaintiff in "an upside down mortgage" case, failed to address certain issues, "demeaned" the plaintiff by asking irrelevant questions, and threatened to arrest the plaintiff.

The undersigned is unable to determine the case in which the alleged misconduct took place based on this scant information. There is insufficient evidence to support a finding of judicial misconduct, and the allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant subjected to harassment and duress by U.S. Marshals

Complainant claims that she was subject to “bias, harassment, and intimidation ... threat of imminent false arrest manifest[ed]” by the “intimidating proximity” of two U.S. Marshals during a motions hearing. She asserts that Judge A was in “direct control” of the courtroom and sanctioned the U.S. Marshals’ conduct which amounted to “duress ... that [I] could either ... plead [my] cause and be arrested or ‘listen’ and comply with making induced oral waivers” not to include federal claims in her state lawsuits if the court granted her motions to remand.

There is nothing in audio-recording or transcript of the hearing to indicate that Judge A ordered the U.S. Marshals to monitor complainant closely, let alone that he did so for the implied purpose of “inducing” her to agree to waive federal claims which complainant expressly stated she was not asserting. Indeed, the judge explicitly stated that the sole repercussion for complainant’s not stipulating that she waived all federal claims would be the court’s denial of her motions to remand the two proceedings to state court.

The allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Conduct during hearing

Complainant complains that Judge A “utilize[ed] an angry elevated badgering voice,” was “belligerent” and “repetitively aggressively interruptive,” “disregarded or stifled” her arguments, and characterizes his statements as “sinister persuasion.” She submits that “the hearing was a mere sham or formality ensuring the remand transpired in a manner most seriously detrimental to [my] litigation.”

A review of the audio-recording shows that Judge A occasionally appeared exasperated with complainant’s repeated denials that she had raised federal claims in her state court petitions, and with her insistence on addressing the court at length about the purportedly sanctionable conduct of defense counsel in removing the matters from state court to federal court. The judge tried repeatedly to focus the proceeding on whether complainant was willing to waive her federal claims so that the court could

grant her motions to remand the matters to state court. Contrary to complainant's assertions, the judge's tone and statements were not angry, aggressive, or "sinister."

Regardless, "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." Liteky v. U.S., 510 U.S. 540, 555-556 (1994). The allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant was not permitted to fully plead her case

Complainant protests that Judge A "disregarded or stifled" her arguments that defense counsel should be subject to sanctions for (purportedly) improperly removing the matters to federal court. She complains that "the hearing was a mere sham or formality ensuring the remand transpired in a manner most seriously detrimental to [my] litigation."

The allegation relates directly to the merits of the judge's decision not to let complainant argue at length for sanctions against the defendants and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Record tampering

Complainant alleges that Judge A tampered with the audio-recording and/or the transcript of the hearing. In support of this claim, she points to the following: words and phrases were omitted from the transcript (e.g., "Uh, let me," "Stop a minute," "Let me," "Well," "They've," and "Wait."); the transcript inaccurately records that complainant stuttered certain phrases (e.g., "Can I. Can I. Can I." and "I'm not."); the transcript was "sanitized" to conceal that complainant was subject to "duress" by the U.S. Marshals; the transcript "chronologically reversed and inserted language making it seem as though both lawsuits were discussed from inception"; the transcriptionist failed to identify "an unidentifiable voice"; and "due process damage arguments never entertained by the Court" were inserted into the record. Complainant contends further

that Judge A intentionally held the hearing without a certified court reporter, court staff modified docket entries associated with order and preparation of the transcript and did so on a Saturday which is “not customary,” and the judge failed to explicitly deny the tampering allegations.”

A comparison of the audio-recording and the transcript demonstrates that the latter is an accurate record of the former. To the extent that “filler” words and phrases were omitted by the transcriptionist, complainant does not provide any evidence that those omissions affected the substance of the record, let alone that Judge A directed the transcriptionist to omit them. Regarding complainant’s claim that the docket entries made by court personnel are equivalent to “notes or insertions in a transcript of record,” there does not appear to be anything irregular about the three entries. Although complainant implies that it was suspicious that entries were made on a Saturday, a review of the docket shows the entries at issue were made on a Tuesday, a Wednesday, and a Monday.

To the extent that the allegations relate directly to the merits of the judge’s finding that complainant’s allegations of record-tampering were meritless, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations that the judge tampered with, or instructed others to tamper with, the transcript and/or the audio-recording of the hearing, or with docket entries, are either clearly contradicted by the record or are so lacking in indicia of reliability that no further inquiry is warranted, and they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Prejudicial and improper order following the hearing

Complainant asserts that in the order of remand entered the day after the hearing, Judge A improperly “act[ed] in the capacity of a certified court reporter when transcribing within Orders, which is not customary, and having done so conspicuously on a Saturday ... and having meticulously inserted quotations around paramount alleged waivers, he neglected to specify any alleged due process waiver in either Order.”

A review of the order shows that it contains no “quotations”, rather the judge simply summarized complainant’s stipulations that she waived all federal law claims. The assertion that the judge “conspicuously” entered the order on Saturday is nonsensical: the date on which the order was entered was a Wednesday.

Complainant further complains Judge A “fraudulently claimed [I] made waivers [pertaining to Case 2]. ... [I] never made any waivers pertaining to [Case 2], either under duress or otherwise. ... [I], if needed, would have fervently defended [Case 2] in its detailed flawless perfection, given its preventable removal language disavowing federal claims.”

A review of the audio-recording of the hearing shows that the judge asked whether the stipulation of waiver applied to both Case 1 and Case 2, and complainant confirmed that it did.

These patently frivolous allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Failed to recuse sua sponte in Case 3

Complainant submits that “in [the] light of said tampering allegations,” Judge A should have recused himself sua sponte when Case 3 was assigned to his docket.

The allegation relates directly to the merits of the judge’s implied decision not to recuse sua sponte and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Judge A improperly “personally reassigned” Case 3 to Judge B

Complainant asserts that Judge A “personally reassigned” Case 3 to Judge B “instead of subjecting it to random reassignment as is dictated by the General Orders of the Federal Judiciary.”

The reassignment of cases is an administrative task performed by the clerk of court pursuant to the district court’s Division of Work Order, not by individual judges, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

II. Magistrate Judge

Complainant alleges that the magistrate judge's mischaracterization of her claims in Case 1 constituted "defamation" and favored the defendants. She protests further that the magistrate judge "refused to correct" the mischaracterizations.

Complainant also alleges that the magistrate judge's finding in Case 3 that the transcript of the hearing in Case 1 was "in alignment with" the audio recording "ha[d] no probative value given that he is neither a certified court reporter nor was [he] present at said hearing." She further complains that the magistrate judge "ordered [me] to divulge private explicit exploitative unnecessary medical details "regarding "major, potentially life threatening female surgery... to be read by opposing counsel and [the defendant's] school board, only to deny a non-opposed 90 day stay and merely grant 45 days." Complainant submits that these decisions constituted "exploitation and deprivation on the basis of gender tantamount to gender discrimination." In addition, she asserts that "in [the] light of said tampering allegations," the magistrate judge should have recused himself sua sponte when preliminary matters were referred to him in Case 3.

To the extent that these allegations relate directly to the merits of the magistrate judge's decisions, including the implied decision not to recuse sua sponte, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of bias and discrimination appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

III. Judge B

Complainant asserts that Judge B "personally reassigned [Case 3] to Judge C, instead of allowing it to be randomly assigned as is customary in accordance with the general orders of the Court."

The reassignment of cases is an administrative task performed by the clerk of court pursuant to the district court's Division of Work Order, not by individual judges, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

IV. Judge C

Lack of jurisdiction in Case 3

Complainant claims that Judge C “unlawfully assumed jurisdiction” over Case 3 which was filed in another division of the district court, “did not receive said litigation randomly,” and “created a change of venue.”

To the extent that the allegations relate directly to Judge C’s decision to exercise jurisdiction over the case, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion that the judge engineered the assignment of complainant’s case to his docket is insufficient to support a finding of judicial misconduct and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Record tampering

Complainant alleges that Judge C tampered with the audio-recording and/or the transcript of a status conference in Case 3. In support of this claim, she points to the following: the transcriptionist misattributed certain statements to complainant instead of to female defense counsel; minor errors (e.g., “and” instead of “in”, “he” instead of “it”); the transcript omitted statements made by defense counsel but included statements complainant did not make; the sound of defense counsel’s laughter “was omitted from the audio-recording”; the transcript erroneously recorded that she “admonish[ed] the bench in regard to smirking, and the attorney in regard to laughter, at the same time”; and the transcript “contains statements contrary to my recollection” which [Judge C] must have “inserted.”

Complainant submits that “it is highly plausible that [Judge C] is culpable” for these errors and omissions, in support of which claim she notes the judge ensured the hearing was held without a certified court reporter and the transcript was prepared by a non-court transcription service.

A comparison of the audio-recording and the transcript demonstrates that with the exception of a few minor errors not affecting the substance of the proceeding, the latter is an accurate record of the former. The allegations that the judge tampered with, or instructed others to tamper with, the transcript and/or the audio-recording of the

hearing are either clearly contradicted by the record or are so lacking in indicia of reliability that no further inquiry is warranted, and they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Prejudicial decisions

Complainant alleges that Judge C's failure to admonish defense counsel for (purportedly) laughing at her during the hearing "constitute[s] overt judicial bias and negligence." She further asserts that the judge "made false claims a Motion to Abate was pending," thereby attempting "to entice" her to agree that a "nonexistent" motion was pending, "a strategic ploy aimed at demolition of [my] lawsuits." Complainant also claims that Judge C: improperly denied a motion "without reading it," failed to sanction the defendant "for secondary groundless removal" of her state court case to federal court, "outright lied" in summarizing the state court proceeding; entered an "invalid scheduling order," conspired to "conceal" the "egregious actions of previous judges" by "mischaracteriz[ing] [their] recusals," and denied her motions to disqualify.

To the extent that these allegations relate directly to the merits of Judge C's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of bias and conspiracy appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Mental Competency

Complainant notes that the parties are misidentified several times in two orders entered on the same date. Judge C entered amended orders correcting the errors after complainant pointed them out. Complainant contends that the errors constitute evidence of "mental confusion ... calling into question" Judge C's mental competency.

To the extent that the allegation relates directly to the merits of Judge C's orders, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation of mental disability is entirely derivative of the merits-related


charges, but to the extent the allegation is separate, it is wholly unsupported, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Intentionally delayed ruling on motion to disqualify

Complainant surmises that Judge C intentionally delayed ruling on her motion to disqualify because, in that motion and several subsequent filings, she mentioned having filed a judicial misconduct complaint against the judge. The undersigned notes that a review of the record shows that the judge promptly denied complainant's prior motion to disqualify raising the same arguments (which the court addressed in detail). The conclusory assertion that the judge deliberately delayed ruling on complainant's repetitive motion to disqualify is insufficient to support a finding of judicial misconduct and is 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.



Carl E. Stewart
Chief Judge

March 5, 2019