

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-20-90141 through 05-20-90143

MEMORANDUM

Complainant, a civil litigant, has filed a judicial misconduct complaint against the subject United States District Judge and two United States Magistrate Judges. Complainant alleges misconduct by Magistrate Judge A in her 2013 case, and by the judge and Magistrate Judges A and B in her 2015 case.¹ She also alleges extra-judicial misconduct by Magistrate Judge A.

2013 Case

Magistrate Judge A conducted a settlement conference during which the parties, through counsel, reached a settlement agreement. The presiding judge then entered judgment dismissing the case without prejudice. Two months later, Magistrate Judge A conducted a motion hearing on the defendants' motion to dismiss the case and enforce the settlement agreement, following which he recommended that the court grant the defendant's motion. The presiding judge adopted the recommendation.

Complainant recounts that prior to the commencement of the motion hearing, she informed Magistrate Judge A that her attorney [Attorney X] would not be appearing because she had terminated his services. She alleges that the magistrate judge "lost it . . . said I could not get rid of an attorney

¹ The complaint being considered is a consolidation of complainant's initial complaint submitted for filing in February 2020, and her subsequent responses to the Clerk of Court's requests for clarification of various incoherent or conclusory allegations and to remedy other deficiencies.

and walked away from me and told Mrs. Judy [sic] to call [Attorney X] now and tell him to get his butt down here now or else.”

A review of the record shows that Attorney X’s motion to withdraw, filed three days before the hearing, was pending and he was therefore required to appear. The audio-recording includes no such exchange between Magistrate Judge A and complainant but, even if the magistrate judge expressed frustration or anger when complainant reported that her attorney would not be appearing, the U.S. Supreme Court has 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.” *Liteky v. U.S.*, 510 U.S. 540, 555-556 (1994). There is nothing in the conduct described which would support a finding of judicial misconduct and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further asserts that during the motion hearing “I was allowed to speak and none of my conversation is on record.” She provides no details about the “conversation” purportedly missing from the record, but the audio-recording shows that complainant addressed the court for almost seven minutes about why the settlement agreement should not be enforced, the only interruptions being when she digressed into arguing the merits of the case. There is insufficient evidence to support a finding that misconduct has occurred, and allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also complains that Magistrate Judge A erroneously recommended that the court should grant the defendant’s motion to enforce the settlement agreement. The allegation relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, without presenting any evidence in support of the claim, complainant alleges Magistrate Judge A “got a good pay off” for “stat[ing] I could not fire an attorney.” Such a conclusory assertion is insufficient to support a finding that misconduct has occurred and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

2015 Case

A review of the record indicates that complainant’s pro se lawsuit was docketed as being filed pursuant to 28 U.S.C. § 1331 with the descriptor “Fed. Question: Personal Injury.” Magistrate Judge B recommended that the lawsuit be dismissed without prejudice for failure to effectuate service on the defendants. Over complainant’s objections, the judge adopted the recommendation.

Complainant protests that the judge “close[d] the case due to FEDERAL QUESTIONING?” To the extent, if any, that the allegation relates directly to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation is nonsensical and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Without providing any evidence in support of the claims, complainant further alleges Magistrate Judge A “enlisted the help of Dishonor [sic] [Magistrate Judge A] to embellish and disregard documentation that were [sic] timely filed,” and Magistrate Judge B “did nothing to stop” Magistrate Judge A “benefiting” from the case. Such conclusory assertions are insufficient to support a finding that misconduct has occurred and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also submits there is “evidence on case file” that Magistrate Judge A’s “letterhead was used to mail letters from [Magistrate Judge B],” and this demonstrates that Magistrate Judge B “allowed” Magistrate Judge A “to interfere with [a] case that he should not have been allowed to have any dealing with.”

A review of the record indicates that the case was filed in Division 1 and all orders and court-correspondence on the docket are captioned as

issuing from Division 1. The only “anomaly” in the record appears to be Magistrate Judge B’s September 2015 order which was mailed in an envelope bearing the address of Division 2, i.e., where Magistrate Judge B’s chambers are located. Regardless, there is no evidence that Magistrate Judge A, whose chambers are in Division 3, “interfered” with the case, and the allegations are therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant appears to allege that Magistrate Judge A had a vested interest in the outcome of her federal lawsuits because he “works for the same Law Firm with [Attorney Y]” who “represented [the defendant] in my [Workers’ Compensation] Case x2. . . . We had a fox in the hen house drinking with the wolves.” In support of this contention, complainant refers to the website of a law firm whose list of attorneys include Attorney Y and an attorney with the same first and last name as Magistrate Judge A.

Complainant is mistaken. State Bar records and other readily available public information demonstrate that the attorney and Magistrate Judge A are not the same person (e.g., different middle initials and markedly different ages), and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Miscellaneous misconduct

Some of complainant’s additional allegations are not clearly related to either of her lawsuits, and many of the assertions are unintelligible and/or unsupported.

Complainant submits that Magistrate Judge A “used his connection[s] to get thing[s] accomplished.” For example, she claims:

- “[M]y medical doctor informed [me] that [Magistrate Judge A] call[ed] him and wanted him to change my medical report. . . . When I made it back home I had my driver to [sic] stop by the office I requested to see Attorney [X], I informed him of what the

doctor had said and for him to please call [the doctor's] office because he said we had a text book case workers' comp case."

Complainant's medical records were not at issue in the 2013 employment discrimination case in which she was represented by Attorney X and Magistrate Judge A conducted settlement proceedings. The medical records were pertinent to her State Workers' Compensation matter and to her 2015 case, however, Magistrate Judge A was not involved in either matter and Attorney A did not represent her in the 2015 case. The Clerk asked complainant twice to provide additional information in support of this claim, but her replies were non-responsive.

Complainant further claims Magistrate Judge A "used his connections" to "accomplish" the following:

- "Things happened and I would receive a text message or a phone call or a guy would be across the street taking pictures of [me] or having [Attorney X] have my neighbor call and find out name of my new attorney;
- "[W]hen my Jeep was stolen message pop-up [sic] to stay at home. Then [I] started receiving calls from Indiana for speeding fines and not paying tow [sic] bridge fine. Jeep still missing."; and,
- Magistrate Judge A is a "stalker and predatory" who, with Magistrate Judge B, "stalked my daughter while away at college" and "[d]ue to reckless behavior of counsel/court my daughter['s] life was endanger by using terroristic activities." In response to two requests for further information, complainant simply states: "Someone was following her."

These conclusory allegations of judicial interference and other improper conduct are so lacking in indicia of reliability that no further inquiry is warranted, and the allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant concludes that the judge and the magistrate judges “were so comfortable in this corruption[,] no one even attempt[ed] to hide the . . . RICO violations, crimes against humanity, breach of contract, and breach of peace . . . fraud, scam, injury of my 18y/o daughter while everyone waiting on [me] to die.”

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of conspiracy and fraud 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) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

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.



Priscilla R. Owen
Chief United States Circuit Judge

November 8, 2020

FILED

December 4, 2020

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

No. 05-20-90141 through 05-20-90143

Petition for Review by [REDACTED], of the Final
Order filed November 10, 2020, dismissing the Judicial
Misconduct Complaint against [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Under the Judicial Improvements Act of 2002.

ORDER

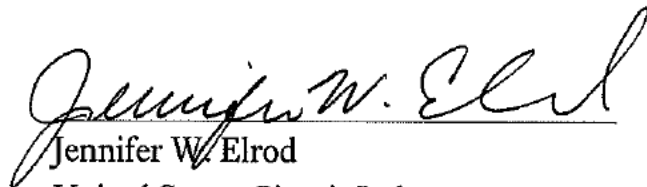
An Appellate Review Panel of the Judicial Council for the
Fifth Circuit has reviewed the above-captioned petition for review,
and all the members of the Panel have voted to affirm the order of
Chief Judge Priscilla R. Owen, filed November 20, 2020, dismissing
the Complaint against [REDACTED]

[REDACTED]
[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Dec. 2, 2020

Date



Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit