

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-20-90145

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## MEMORANDUM

Complainant, a civil litigant, alleges misconduct by the subject United States District Magistrate Judge in her employment discrimination case. The magistrate judge conducted a final pretrial conference [“Hearing 1”] during which complainant and the defendant-University, through counsel, reached a settlement agreement. The following day, the parties filed a stipulation of dismissal with prejudice. Two months later, the magistrate judge conducted a hearing [“Hearing 2”] on the defendant-University’s motion to enforce the settlement agreement, at the conclusion of which the parties signed an amended settlement agreement.

Complainant alleges that during Hearing 1, her attorney [“Attorney X”] and the magistrate judge “consistently discouraged” her and “coerced” her “into accepting less money for my economic recovery.” For example, she asserts the magistrate judge “informed [me] . . . that I would not be granted summary judgment against the defendants” and stated “[the defendant-University] says not to come back asking for more money.”

The district court’s local rules govern the conduct of settlement negotiations by a magistrate judge acting as a mediator and provide that “mediators facilitate communications between the parties and assist them in their negotiations. When appropriate, mediators may also offer objective evaluations of cases and may make settlement recommendations.” The magistrate judge’s remarks recounted by complainant appear consistent with the “objective evaluations” and “settlement recommendations” permitted under the local rules.

There is insufficient evidence to raise an inference that misconduct has occurred, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further claims that during Hearing 2, the magistrate judge: “admitted to me I was victimized by himself and [Attorney X]”; “stated that ‘low-balling’ people in settlement court was a ‘common practice’”; “informed me that summary judgment had been ruled in my favor” (thereby “proving false and misleading information was given to me by the magistrate judge and [Attorney X]” during Hearing 1; and, said “that ‘50,000 was no longer on the table.’”

A review of the audio-recording of Hearing 2 shows that the magistrate judge did not make the statements explicitly attributed to him. Even if complainant is paraphrasing comments as she recalls them, the only relevant remarks seem to be the magistrate judge’s summation of complainant’s statement that Attorney X told her he would be seeking a \$50,000 settlement, and the magistrate judge’s findings that, based on the testimony of counsel and complainant, the parties agreed to settle for a lesser amount and complainant later changed her mind.

To the extent, if any, that the allegations relate directly to the merits of the magistrate judge’s findings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, there is insufficient evidence to raise an inference that misconduct has occurred, and the allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also asserts that the magistrate judge’s “disdain and contempt for me was blatantly obvious.” To the extent that this claim might be aimed at the magistrate judge’s conduct and demeanor during Hearing 1, the proceeding was not recorded. However, complainant provided the name of an individual who witnessed the magistrate judge’s allegedly “unethical and unprofessional conduct.” A limited inquiry was conducted pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The witness did not respond to a request to contact the Court.

Attorney X recalled that the magistrate judge “was professional and ethical at all times” during the settlement negotiations.

I find that the allegation that the magistrate judge displayed “disdain and contempt” towards complainant during Hearing 1 is incapable of being established through investigation and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that the claim might be aimed at the magistrate judge’s conduct and demeanor during Hearing 2, a review of the audio-recording demonstrates that he was unfailingly respectful towards complainant.

The allegation that the magistrate judge displayed “disdain and contempt” towards complainant during Hearing 2 is clearly contradicted by the record and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant protests that the magistrate judge “should have recused himself from my case because of his personal or professional connections to [the defendant-University].” Although complainant presents no information in support of this claim, a cursory internet search shows that the magistrate judge obtained his Bachelors, Masters, and Juris Doctorate degrees from the defendant-University and he is an adjunct professor in the School of Law.

Allegations that a judicial officer erred in failing to recuse are generally subject to dismissal as merits-related under 28 U.S.C. § 352(b)(1)(A)(ii). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9<sup>th</sup> Cir. Jud. Council 2010). Complainant has presented no evidence that the magistrate judge had an improper purpose in not recusing himself sua sponte, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant concludes that the magistrate judge: “participated in a conspiracy” with Attorney X and defense counsel to engage in “blatant coercion, deception, fraud, and collusion”; “had a hidden agenda of

continued victimization and obstruction of justice and due process”; “abused his power to persuade me to settle and not to proceed to trial . . . to protect [the defendant-University]”; “defrauded me of my full economic recovery”; violated the Federal Rules of Civil Procedure; and, his conduct of her case “was a prime example of racial inequity, injustice and racial bias.”

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, fraud, lack of due process, abuse of power, obstruction of justice, and racial bias 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.



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Priscilla R. Owen  
Chief United States Circuit Judge

\_\_\_\_\_November 9\_\_\_\_, 2020