

FILED

December 9, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90141

MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States Magistrate Judge in complainant's employment discrimination proceeding.

Complainant alleges that the magistrate judge's remarks during a settlement conference "went well beyond efforts to mediate and resolve the case," and demonstrated "preconceived and prejudiced notions, given out of context with no regard for the record of evidence," "racial discriminat[ion]," and "gender bias." For example:

- The magistrate judge said, "You keep talking about [X]¹ being a felon, but his actions are not actionable." Complainant protests that this statement was an "abuse of power," an improper "fact determination rendered in a settlement conference by a magistrate judge [who] ignored all facts and evidence related to that subject."²
- The magistrate judge stated that the presiding judge "would never allow me to be awarded what I was asking for in terms of

¹ X was a white male co-worker complainant alleged directed profanities at her, threatened her, and subjected her to ongoing harassment based on her race and sex.

² The undersigned notes that in an order granting the defendant's motion for summary judgment, the presiding judge made a similar observation about X's criminal history being "irrelevant" to the court's consideration of complainant's employment discrimination claims.

compensation or damages.” (A review of the record indicates that complainant was seeking \$750,000 in damages.) Complainant objects this was a “very blatant judgment and final determination” that should not have been made during a settlement conference.

— “When I mentioned my willingness to appeal my case if I felt the lower court decision warranted it, [the magistrate judge] asked in a very condescending tone, “Do you know what it cost[s] to file an appeal?” He further stated that I should not expect seven judges to agree on any appeal I might attempt to file” Complainant asserts that this “questioning [of] my ability to pay for an appeal was racist and posed simply because I am a woman of color, whom he assumed couldn’t afford an appeal.”

Complainant alleges that the magistrate judge’s tone was “condescending,” his “tactics were demeaning, insulting, and abusive,” his remarks “gave every indication of racial and gender bias,” he “advocated in my presence for a white male felon,” and he “was visibly angered and annoyed by my unwillingness to take a \$6,000 offer to settle my case.”

The commentary to Canon 3(A)(4) of the Code of Conduct for United States Judges states that “[a] judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.” The district court’s Local Uniform Civil Rules provide that a mediator—in this instance, the subject magistrate judge—conducting a settlement conference may, when appropriate, “offer objective evaluations of cases and may make settlement recommendations.”

The settlement conference was not recorded but the magistrate judge’s remarks, as recounted by complainant, appear to have been aimed at encouraging her to consider settlement based on his objective evaluation of the case. The conclusory assertion that the magistrate judge intended to

demean, insult, or abuse complainant or to coerce her into settling her claims, are 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.”

To the extent that complainant complains about the magistrate judge’s tone and demeanor, the Supreme Court of the United States 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). This aspect of the complaint is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In other respects, the conclusory assertions that the magistrate judge’s conduct constitutes evidence of discrimination, prejudice, and “racial and gender bias” against complainant are 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.”

Complainant also alleges that the magistrate judge’s “racial and sexual biases manifested in his ruling for Defendant’s Motion for Summary Judgment when he left out, ignored, did not even mention, much less consider evidence that was on the record.” A review of the record shows that the magistrate judge entered no rulings regarding the defendant’s motion for summary judgment, and the allegation is therefore subject to dismissal as frivolous 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.

This is complainant's third merits-related, conclusory, and/or frivolous complaint, and she has been warned previously against filing a further merits-related, conclusory, frivolous, or repetitive complaint. Complainant's right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why her right to file further complaints should not be so limited.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

December 3, 2021

**Before the Judicial Council
of the Fifth Circuit**

United States Court of Appeals

Fifth Circuit

FILED

February 4, 2022

Lyle W. Cayce
Clerk

Complaint Number: 05-21-90141

The Petition for Review by [REDACTED] Against
[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 December 09, 2021, dismissing the Complaint against [REDACTED], under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Feb. 3, 2022

Date

Jennifer W. Elrod

Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit