

FILED

November 14, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90084

MEMORANDUM

Complainant, a retired attorney, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in two civil proceedings.

Case A

The magistrate judge presided over the case in which complainant represented a plaintiff who sued his former employer, a local government agency. The case settled and was dismissed in 2015.

Complainant claims that another client told him that the magistrate judge's wife worked for the local government agency. Complainant complains that the magistrate judge should have disclosed this or recused himself in Case A.

A cursory internet search indicates that the magistrate judge's wife has been employed by a non-governmental agency since 2011. Pursuant to a limited inquiry conducted pursuant to 28 U.S.C. § 352(a)(2) and Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the magistrate judge confirmed that his wife has never worked for the local government agency.

This aspect of the complaint is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Case B

Complainant represented the plaintiff. The magistrate judge, who presided by consent, granted the defendant's motion for summary judgment and, in November 2016, he entered final judgment dismissing the case with prejudice.

Complainant alleges that during a hearing on the motion for summary judgment, the magistrate judge "interact[ed] with counsel with personal insults and unprofessional behavior to hide [the magistrate judge's] insecurity and lack of understanding of the subject matter" in the case. He further alleges that similarly "insulting" and "unprofessional behavior" is evident in the magistrate judge's order granting summary judgment. Complainant does not quote or paraphrase any examples of the allegedly insulting and unprofessional remarks.

The claim that the magistrate judge subjected complainant to "personal insults and unprofessional behavior" is not borne out by the evidence that complainant cites.

- A review of the summary judgment hearing transcript reveals nothing in the magistrate judge's remarks that could conceivably be described as a "personal insult" or "unprofessional."
- In the summary judgment opinion, the magistrate judge criticized complainant's original summary judgment response as excessively long, and as having exhibits that were poorly organized, incorrectly numbered, duplicative, and largely unintelligible. Later, the judge wrote that the plaintiff's submissions and her original complaint lacked clarity. The rest of the opinion addressed and rejected each of the plaintiff's arguments on the facts and the law, but there is nothing else that could be considered as a criticism of complainant.

Regardless, to the extent that complainant asserts that the magistrate judge's criticisms of his pleadings were "insulting" and "unprofessional," the U.S. Supreme Court has held that "[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards [a party or an attorney] . . . But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings" *Liteky v. U.S.*, 510 U.S. 540, 550-551 (1994).¹

The magistrate judge's oral and written criticisms of complainant's arguments and pleadings appear to have been well within the range of expression permitted by *Liteky*, and this aspect of the complaint is 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.

Complainant also complains that the magistrate judge "refused to allow [me] to file summary judgment exhibits without even viewing them or ruling on their relevance and admissibility."

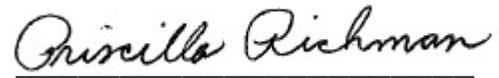
This aspect of the complaint relates directly to the merits of decisions or procedural rulings and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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.

¹ See also Guide to Judiciary Policy, Vol. 2B, Ch. 2, § 220, Committee on Codes of Conduct Advisory Opinion No. 66, at 93.

Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality. Strongly stated views rooted in the record, a stern and short-tempered judge's efforts at courtroom administration and even anger directed toward an attorney or a party should not be confused with judicial bias.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla Richman
Chief United States Circuit Judge

November 10, 2022