

FILED

August 23, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90040

MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge in a pending civil matter.

Complainant alleges that the judge “allowed the defendants who are lawyers to file a separate case number.” The docket does not reflect any severance or issuance of a separate case number, and complainant declined to clarify this claim.¹ Complainant further alleges that the judge “allowed the lawyers who committed felonies out of the case.” Complainant declined to clarify this claim, but a review of the docket suggests that she has misinterpreted the court’s orders permitting the defendant-lawyers to file motions to dismiss as “allowing [them] out of the case.”

Complainant claims that the judge’s case manager did not provide her with the link to join a pre-motion videoconference “until 25 minutes into the hearing and [I] was muted,” and she further protests that the minute entry for the conference incorrectly recorded that “she was not present.” Complainant asserts that because the judge proceeded with the hearing prior

¹ Pursuant to Rule 6(b) and Fifth Cir. Proc. 6(b) of the Fifth Circuit Rules For Judicial-Conduct and Judicial-Disability Proceedings, before a complaint is transmitted to the Chief Judge for consideration the Clerk conducts a preliminary review of the statement of facts. If, as in the instant complaint matter, certain allegations are unclear or vague, the Clerk may ask the complainant to provide an additional written statement clarifying those claims.

to her joining the video-call, the conference was an improper *ex parte* proceeding.

These allegations appear to be contradicted by the record. The minute entry for the conference records that the hearing lasted only six or seven minutes, i.e., it concluded at least 18 minutes before complainant claims she was able to join the video call. Furthermore, the hearing was not “*ex parte*” because the docket records that two Notices of Setting—which included the video-conference link—were sent to the parties, one ten days before the hearing and the other seven days before the hearing.

To the extent that these allegations relate directly to the judge’s decisions to proceed with the pre-motion conference and to record that complainant was not present, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any failure to provide a Notice of Setting or a video link to complainant was the responsibility of non-judicial court personnel, not the judge, and this aspect of the complaint is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant complains that despite her declining to consent to proceed before a magistrate judge, the judge improperly referred the case to a magistrate judge for a pretrial conference.

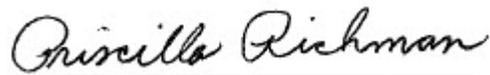
Pursuant to 28 U.S.C. § 636(b)(1)(A) magistrate judges are authorized to hear and determine “any pretrial matter.” The parties’ consent is only required for a magistrate judge to issue dispositive rulings and conduct trials. 28 U.S.C. § 636(c); FED. R. CIV. P. 73. This allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant alleges that the judge should have (*sua sponte*) recused himself because he has not allowed a “fast trial” despite complainant’s complaint allegedly showing “proof of fraud.”

This 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).

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 Richman

Chief United States Circuit Judge

August 19, 2023