

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-24-90011 and 05-24-90012

MEMORANDUM

Complainant, a civil litigant, alleges misconduct by the subject United States District Judge and the subject United States Magistrate Judge in a Limitation of Liability Act case in which complainant sought damages for personal injuries.

Complainant complains that the magistrate judge “was very bias[ed] in mediating this case.” In support of this claim, complainant quotes or paraphrases prejudicial statements allegedly made to him, his co-claimant, and the co-claimant’s wife “in the presence of my former attorney” during a settlement conference in October 2018. For example:

- “Nothing is wrong with you guys.”
- “I stopped reading your doctors’ diagnosis of you guys and I focused on the defendant doctor’s report.”
- “She know[s] that we are not telling the truth (malingering) [sic].”
- “You guys can go be a greeter at Wal-Mart for all I care.”
- “Go get a job, no one is taking [sic] of you.”
- “I will GUARANTEE you that NO ONE in my department will grant you anything.”

Because settlement proceedings are not recorded, a limited inquiry under 28 U.S.C. § 352(a) was conducted to verify complainant's claims. Complainant's attorney in the district court matter recalled that the magistrate judge was "very professional and patient" and "treated everyone with respect and dignity." He stated that any comments the magistrate judge made with respect to the strengths and weaknesses of the case were, in his experience, all in the normal course of settlement discussions. The attorney opined that complainant appeared to have exaggerated and taken some of the magistrate judge's statements out of context. In short, complainant's attorney did not think that the magistrate judge said anything in the conference that merited criticism, let alone suggested prejudice against his client.

Complainant further protests that the magistrate judge, "(who said she guarantee [sic] that I would not and [sic] win and she would personally see to me not getting anything), was in the courtroom for my testimony." In addition, he claims that during a recess in the trial, "my wife (fiancé at that time) who was sitting on the bench outside the courtroom . . . overheard [the magistrate judge] tell [defense counsel] to CYA (cover your ass) in there." Defense counsel, who was contacted as part of the limited inquiry under 28 U.S.C. § 352(a), said that the "CYA" comment "never happened," he did not see the magistrate judge at all during the trial, and as first-chair defense counsel he would not have been "chit-chatting" with anyone outside the courtroom.

A review of the docket indicates that magistrate judge took no further part in complainant's case after a second settlement conference held in May 2019. Even if she attended the subsequent bench trial before the district judge, the only "prejudicial" conduct allegedly connected to her attendance was the purported remark to defense counsel, an interaction defense counsel categorically denies took place.

Based on the limited inquiry authorized by 28 U.S.C. § 352(a), the allegations that the magistrate judge demonstrated bias against complainant

during the settlement conference and during a recess in the trial are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(1)(E), Rules for Judicial-Conduct and Judicial-Disability Proceedings, as “incapable of being established through investigation.”

Complainant also complains that the magistrate judge “allowed [defense counsel] to threaten me about going to court with [the district judge], whom [sic] [defense counsel] said was appointed by former-President Donald Trump (I felt as if the race card was being played on me).”

This is a complaint about something allegedly said by defense counsel during settlement proceedings, not by the magistrate judge. As complainant does not assert that the magistrate judge did anything to provoke or encourage any such remark, this aspect of the complaint is 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 complains that the district judge lacked “the medical qualifications to overrule ... [the] opinions and diagnos[es]” of complainant’s “five medical expert doctors.” He further asserts that the judge “intentionally, deliberately, and maliciously” misrepresented the “facts of the testimony and facts of the case ... to deceive, manipulate, defame my character and to push an agenda-driven narrative of malingering,” and improperly dismissed complainant’s claims based on “personal feelings and views.”

Finally, complainant alleges that the subject judges “subt[ly] played the RACE CARD,” “stereotype[d] [me] by implying [I] was malingering ... based off my skin color, the amount of money I was earning and the [sic] lack of education, because I did not have a college degree.”

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 racial animus or other improper motive 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 Richman

Chief United States Circuit Judge

December 29, 2023