

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

APR 14 2018

**FIFTH CIRCUIT
LYLE W. CAYCE, CLERK**

Docket Number: 05-16-90067

MEMORANDUM

Complainant, a bankruptcy litigant, has filed a rambling and repetitive 57-page judicial misconduct complaint against the subject United States Bankruptcy Judge who, in March 2011, entered a non-dischargeable judgment against complainant. In May 2011, the judge granted the plaintiffs' motion for award of attorneys' fees. Complainant has not yet satisfied either the judgment or the award of attorneys' fees.

Much of the complaint is aimed at the allegedly improper conduct of plaintiff's counsel who complainant claims has engaged in a "witch hunt" and a "reign of terror" in an effort to strip complainant of her exempt assets to satisfy the judgment and award of attorneys' fees. She describes the judge as an "accomplice" who is "aiding", "abetting" and "encouraging" plaintiffs' counsel's attacks", and is "abusing her position to rage [sic] a war against a disabled widow." Complainant further contends that the judge has consistently ruled out of favoritism to Plaintiffs' counsel rather than on the basis of the evidence.

For example, complainant alleges that the judge:

- chose "to believe plaintiffs' counsel's fraudulent evidence" and enter judgment in favor of the plaintiffs;
- found, based on complainant's demeanor in hearings, that complainant's version of the underlying events was not credible;
- "made up evidence", made "derogatory comments", and "showed disdain" in finding that complainant breached her fiduciary duties, and must be "having *ex*

parte communications with [plaintiffs' counsel] to help her in her plot to strip [me] of [my] money”;

- “possibly let her own personal problems and opinions toward [me] influence her decision” because plaintiffs’ counsel portrayed complainant as a “gold digger who broke up a marriage”;
- unduly delayed issuing the judgment (seven months between hearing and order);
- lacked jurisdiction over complainant and her assets after the judgment was entered;
- denied complainant’s motion for a continuance of a deposition due to illness, ordered her “to attend hearings over six hours from [her] home”, and did so “to make sure [complainant] does not secure counsel and become aware of the judge’s illegal acts”;
- disregarded the law by ordering complainant to produce, within 14 days, two years’ worth of bank statements;
- knew that complainant would not be able to comply with the order to produce, thereby making it possible for the judge to impose sanctions;
- discriminated against complainant, a disabled litigant, by “forcing” her to “adhere to impossible demands because the judge decide[d complainant didn’t] ‘look disabled’”, “forced [complainant] to represent herself and ignored [her] disabilities in making her stand and defend herself in numerous hearings”;
- imposed a \$2,500 sanction for non-compliance with the court’s order to produce documents, even though plaintiffs’ counsel produced “no evidence of [my] non-compliance”;
- issued orders after complainant filed a Chapter 13 bankruptcy petition in the another district court, thereby violating the automatic stay;

- “was finally caught in her illegal acts” and vacated the orders after the other United States Bankruptcy Judge called the subject judge do discuss her violation of the automatic stay;
- was “infuriated ... that I would have the gall to take my issues to someone else who could possibly question her actions”, and “convince[ed] [the other bankruptcy judge] to dismiss [my] Chapter 13 Bankruptcy ... and send [complainant] ... back to more abuse in [the judge’s] court”; and,
- has not “attempt[ed] to discover the truth behind [plaintiffs’ counsel’s] libelous statements” against complainant in the latest motion for sanctions, instead the judge has “become more enraged with [me] and finds more ways to sanction [me] and teach [me] who is boss!”

The remainder of complainant’s allegations are in a similar vein.

To the extent that the allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory allegations of bias, discrimination, and retaliation, and of *ex parte* communication between the judge and plaintiffs’ counsel, are insufficient to support a finding of judicial misconduct and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Regarding the assertion that the judge displayed bias by making “derogatory comments” about complainant in her findings, the Supreme Court of the United States has held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards [a litigant] ... 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. United States, 510 U.S. 540, 551 (1994). The allegation is also subject to dismissal under 28 U.S.C. § 352 (b)(1)(A)(iii).

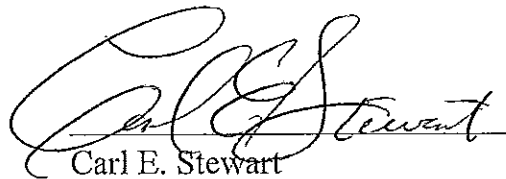
To the extent that complainant is alleging undue delay between the trial and the judge’s entering judgment, pursuant to Rule 3(h)(3)(B) of the Rules For Judicial-Conduct

and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay.” As the complaint conclusorily asserts the former, and there is no evidence of the latter, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant alleges *ex parte* communication between the two bankruptcy judges, the prohibition against *ex parte* communication is aimed at communication between the court and a party, 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.

An order dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart
Chief Judge

April 1, 2016

JUN 14 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90067

Petition for Review by [REDACTED]
of the Final Order Filed April 14, 2016
Dismissing Judicial Misconduct Complaint 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 Stewart, filed April 14, 2016, dismissing the Complaint of [REDACTED] against [REDACTED], under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

6-3-2016
Date

Priscilla R. Owen
Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit