

FILED

August 6, 2020

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-20-90122

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge in complainant's civil rights proceeding.

Complainant describes himself as "100% Totally and Permanently disabled," "intellectually disabled," and "gay, white man." He asserts that the judge's adverse rulings, and allegedly hostile demeanor and dismissive conduct during a June 15, 2020 status conference, constitute evidence that the judge disregarded complainant's disabilities and is biased against "Gay, White Men," and the judge's rulings and conduct were discriminatory and retaliatory.

Complainant further submits that the judge erroneously and prejudicially: held that Defendant-C was not served before the June 15 status conference and was therefore not required to participate and was not in default for failing to file an answer to complainant's claims; ordered that some of complainant's filings should be stricken for failure to comply with court procedures; proceeded with a June 25, 2020 show cause hearing despite complainant and his co-plaintiff filing Letters of Medical Necessity attesting to their inability to participate in the proceeding; permitted Defendant-C "suddenly" to participate in June 23 and June 25 hearings (complainant erroneously contends that Defendant-C has never been served, but the docket records the defendant was served on June 18); and, abused his

judicial discretion by enjoining complainant and his co-plaintiff from “further IFP filings without [the judge’s] express permission.”

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, a comprehensive review of the record, including the audio-recording and transcript of the June 15 status conference, shows that the allegations of bias, discrimination, and retaliation 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.”

To the extent that complainant is complaining about the judge’s occasionally stern tone and demeanor during the June 15, 2020 status conference, the United States Supreme Court 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).

Complainant also claims the judge did not notify him of the June 15, 23, and 25 conferences, and this lack of notice “is overt evidence of harassment and a disposition of retaliation.” This allegation is clearly contradicted by the docket and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant contends that the judge engaged in “manipulation of documentation,” i.e. tampered with the record, conduct that “ultimately enable[ed] heinous misconduct.” In support of this claim, complaint points to a handwritten date on a clerk’s office “filed” stamp on his application to proceed in forma pauperis, inconsistencies in the

party/counsel listings on the docket after the judge ordered the clerk's office to remove the attorney-designation initially assigned to complainant's purported counsel, and the docketing of an application to proceed in forma pauperis complainant filed in another case. Even if these clerical acts were erroneous, complainant presents no evidence that the judge was responsible for the clerical acts, let alone that complainant suffered any prejudice from them.

To the extent, if any, 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, the conclusory allegations of record-tampering are insufficient to raise an inference that misconduct has occurred and are therefore subject to dismissal 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.



Priscilla R. Owen
Chief United States Circuit Judge

August 4, 2020