

**FILED**

August 6, 2020

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-20-90127

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## MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge in complainant's 28 U.S.C. § 1983 proceeding.

After initially proceeding pro se, the defendant, a state judge, retained three attorneys from Law Firm A. Defense counsel filed an appearance form the day before a pre-motion conference.

Complainant alleges the subject judge is "fixated" on Law Firm A due to "past or present acquaintance(s), friendship(s) or affiliation(s)" and "used his office" to communicate "ex parte" with the law firm to improperly "secure" representation for the pro se defendant, and engineered the "proliferation" of three defense counsel "when one attorney would have sufficed."<sup>1</sup> He further complains that the judge failed to sua sponte "extend . . . concurrent courtesy" and appoint counsel to represent him, the pro se plaintiff.

There is nothing in the record to support the contention that the judge engaged in ex parte communication with Law Firm A, or appointed, "secured," or otherwise influenced the defendant's decision to retain

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<sup>1</sup> In support of this claim, complainant lists six examples of purported acquaintance, affiliation, or friendship, all of which are remote or coincidental. For example: at a federal Bar Conference, the judge was a panelist for two breakout sessions and an attorney (not associated with the instant case) from Law Firm A was a panelist at a third breakout session; the judge and one of the defense counsel graduated from the same law school 12 years apart; and the judge is an adjunct professor at a law school where Law Firm A sponsors a full-time Professor position.

counsel from the law firm, and these allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as frivolous or as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

Complainant also objects that the pre-motion conference was “improper” because “there were no notices of any hearing scheduled.” The assertion is clearly contradicted by scheduling notice docketed 18 days before the conference and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant alleges the judge acted in a “demonstrably egregious and hostile manner” during the pre-motion conference. For example: the judge engaged in “exclusive litigation for the Defense” by “obtusely asking the newly appointed counsel for validation of a point he was attempting to make to me,” thereby demonstrating that the proceedings “were obviously, intentionally and appreciably impaired despite my attempts to bring [the judge] up-to-speed”; and, “after summarily dismissing all filings by [me],” the judge made “incendiary comments” about complainant’s “lack of legal acumen” and “improperly extolled the virtues to [me] of finding and securing counsel.”

A review of the audio-recording and transcript of the conference demonstrates that the judge was courteous and patient throughout the proceeding. The judge allowed complainant to address the court at length about the basis of his motion for default judgment, why the defendant’s absolute immunity claim was erroneous (an argument the judge asked defense counsel to answer), and why defense counsel’s notice of appearance “less than 24 hours before the docketed proceeding” was improper (in response to which defense counsel offered a brief explanation about the defendant’s retention of counsel). Noting that some of complainant’s arguments demonstrated a lack of understanding of the interplay between the FED. R. CIV. PROC., the judge encouraged him to consult with an attorney.

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 bias in favor of the defendant and against complainant 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.



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Priscilla R. Owen  
Chief United States Circuit Judge

\_\_\_\_\_August 4\_\_\_\_, 2020