

FILED

February 5, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90045

MEMORANDUM

Complainant, a criminal defendant, alleges misconduct by an “unknown judge” in complainant’s criminal proceeding. Based on complainant’s allegations and a review of the docket entries in the underlying proceeding, it is apparent that the allegations are aimed at the subject United States Magistrate Judge.

Complainant complains that in January 2021 he was “electronically brought before” the magistrate judge—who failed to “identify himself”—for a hearing “of an unknown nature, for an unknown purpose.”

A review of the two-minute and nine-second audio-recording of the hearing supports complainant’s claim that the magistrate judge did not identify himself during the proceeding. However, a review of the docket indicates that complainant had previously appeared before the magistrate judge in August and September 2020 and, as such, complainant’s claim that he was “oblivious” to the magistrate judge’s identity seems doubtful. Regardless, it is unclear what prejudice, if any, complainant suffered due to the magistrate judge’s failure to identify himself and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant complains that he was not notified of the “nature” and “purpose” of the January 2021 hearing, a review of the docket indicates that electronic notice of the original in-person hearing was docketed in late December 2020, and electronic notice that the hearing had been reset as a video teleconference was docketed the day prior to the scheduled hearing date. It was the responsibility of defense counsel, not the magistrate judge, to keep complainant apprised of the “nature,” “purpose” and scheduling of the hearing, and this aspect of the complaint is therefore also subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further claims that the magistrate judge “demanded” he tell the court whether he consented to participating in the video teleconference and, when complainant “politely” asked if he could ask a question, the magistrate judge “very tersely stated that [he] was “the one asking the questions here.”” Complainant asserts that the magistrate judge’s “aggressive and intimidating behavior . . . undermined [my] ability to make a fair and cogitated decision as to whether to proceed or not,”¹ “plausibly resulted in denying [me] the ability to fairly and strategically perform as to [my] own defense,” and “chilled [my] right to petition the court in all manners relevant to [my] criminal defense.”

A review of the audio-recording shows that the magistrate judge’s tone was stern in redirecting complainant to answer the court’s question whether complainant had heard and seen defense counsel announce his appearance at the video teleconference. However, there is nothing to support complainant’s characterization of the magistrate judge’s tone or demeanor as “aggressive” or “intimidating” during the brief hearing. In *Liteky v. U.S.*, 510 U.S. 540, 555-556 (1994), the United States Supreme Court held that

¹ The record indicates that complainant declined to consent to proceed by video teleconference, and two weeks later the magistrate judge conducted an in-person hearing on complainant’s motion.

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). The allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

February 4, 2021