

**FILED**

June 9, 2022

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-22-90070

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## MEMORANDUM

Complainant, a civil litigant, alleges misconduct by the subject United States Magistrate Judge in two related civil actions in which complainant is the plaintiff.

The magistrate judge conducted a mediation of the above cases, followed by a telephone conference call with complainant and complainant's counsel, addressing complainant's reluctance to sign settlement papers. Complainant alleges that during the telephone conference call, the magistrate judge was "irate," "yelling," and speaking in a "loud voice." He alleges that the magistrate judge said that "he would select [a settlement] agreement if I didn't," and that the magistrate judge attempted "to force me to sign an agreement that I never agreed to, by using threats to issue a charge of contempt of court if I refused to sign."

In a limited investigation pursuant to Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, complainant's attorney was interviewed. The attorney stated that although the magistrate judge was "frustrated" with complainant's refusal to conclude the settlement, the attorney did not perceive the magistrate judge as "yelling." The attorney said that the magistrate judge said something to the effect of "I'll just enter an order," but the attorney's impression was that this was in the context of a potential defense motion to enforce the settlement. Finally, the attorney said

that the magistrate judge had mentioned a finding of contempt, not as a direct threat but as a statement that the option “was available.”

In *Liteky v. United States*, 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court 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.”

The magistrate judge’s expressions of frustration, and statements about available options if complainant refused to sign settlement papers, were within the latitude that *Liteky* affords to judges. There is insufficient evidence to raise an inference that misconduct has occurred, and the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman  
Priscilla Richman  
Chief United States Circuit Judge

June 7, 2022