United States Court of Appeals
Fifth Circuit
FILED
September 23, 2025
Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-25-90081

IN RE COMPLAINT OF JUDICIAL MISCONDUCT
UNDER THE JUDICIAL IMPROVEMENTS ACT OF 2002.

ORDER

Complainant, the mother of a criminal defendant, has filed a complaint alleging misconduct by a United States District Judge ("Judge A") in revocation proceedings in her son's 2006 criminal case and in his 2021 criminal case.

Pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, this matter has been assigned to me for consideration.

Background

In the 2006 criminal case before a different United States District Judge ("Judge B"), Complainant's son ("X") was indicted on five counts related to drug trafficking and possession of firearms by a convicted felon. X entered guilty pleas to all charges in the indictment. Judge B imposed concurrent 71-month and 60-month sentences, followed by concurrent 3-year and 5-year terms of supervised release. More than ten years later, Judge B's criminal docket, including post-conviction proceedings in X's 2006 criminal case, was reassigned to Judge A's docket.

In 2020, X commenced his concurrent terms of supervised release. In February 2021, an attorney informally sought Judge A's approval to employ X as a legal assistant. Shortly thereafter, Judge A granted a related motion

filed by the United States Probation Office in the 2006 case, seeking to change X's conditions of supervised release, i.e., prohibiting X from accessing and viewing federal sealed court documents, federal presentence reports and addenda, and electronic filing or records systems while employed by the attorney.

Nine months later, X was indicted on four counts related to drug trafficking, and the 2021 criminal case was assigned to Judge A's docket. The United States promptly moved to revoke X's supervised release in the 2006 criminal case. On the second day of the jury trial in in the 2021 case, X entered a guilty plea to one count of the indictment.

In the final revocation proceeding in the 2006 case, Judge A imposed a 57-month sentence to run consecutively to any sentence imposed in the 2021 criminal case. The sentencing hearing in the 2021 case was held immediately thereafter, and Judge A imposed a 252-month sentence, followed by supervised release for a term of five years.

Allegations

Failure to disqualify sua sponte/failure to disclose conflict of interest

Complainant complains that Judge A should have disqualified himself sua sponte in the two proceedings due to a conflict of interest, i.e., the judge held a "personal grievance" against X who "he felt made him look bad for allowing [X] to work for [the attorney]," the judge's "personal friend and colleague." Complainant further complains that Judge A failed to disclose this conflict of interest to the parties. She submits that the failure to disqualify and the failure to disclose were "unethical" and "biased."

In support, Complainant points to remarks Judge A made during the final revocation hearing in the 2006 case and the sentencing hearing in 2021 case which were held consecutively on the same day. She alleges the judge remarked "several times how [X] did not take the amazing opportunity they

had given him with a good job … [T]his was a personal grievance toward the opportunity he felt he had afforded [X]."

Canon 3(C) of the Code of Conduct for United States Judge provides:

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
>
> (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.][1]

Regarding Complainant's contention that Judge A should have disqualified himself sua sponte because he held a "personal grievance" against X for squandering the court-approved employment opportunity, it is not unusual for a judge to be familiar with a criminal defendant from presiding over a prior criminal proceeding. A judge who presides over a prior criminal matter is not thereby conflicted from presiding over a subsequent criminal proceeding of the same defendant. Similarly, it is not unusual for a judge to address a defendant's prior criminal history during a sentencing hearing, and to express frustration or disappointment that the defendant did not change their behavior after being released from prison. Judge A's remarks about X wasting the opportunity afforded to him to work at a law firm while on supervised released were made within the context of X's perceived failure to change his behavior.

Complainant offers no support for the claim that Judge A had a "personal grievance" against X because the attorney is his "personal friend

[1] See Guide to Judiciary Policy, Vol. 2A, Ch. 2, at 8.

and colleague."[2] Moreover, given that post-conviction matters in the 2006 case were assigned to Judge A, it was entirely proper for the attorney to approach the judge for approval to employ X, who was serving the concurrent terms of supervised release imposed in that case. And Judge A's action in response to the attorney's request was within his judicial authority as the presiding judge on X's criminal proceedings.

For these reasons, Judge A's implied decision not to disqualify himself sua sponte does not violate Canon 3(C)(1)(a). The allegation that the judge's decision was erroneous is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii) as "directly related to the merits of a decision or procedural ruling." The complaint procedures in 28 U.S.C. §§ 351-364 are not a substitute for the normal appellate review process and may not be used to obtain reversal of a decision or a new trial.

The conclusory assertions of personal animus and prejudice are 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."

Regarding Complainant's allegation that Judge A improperly failed to disclose his prior knowledge of X to the parties, the record reflects that the judge's approval of X's employment with the attorney was known to both prosecution and defense counsel. This allegation is 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."

Demeanor and remarks indicating lack of impartiality

Complainant complains that Judge A's inability to be impartial was evident from the judge's demeanor and tone during the hearings on February

[2] A cursory internet search indicates that Judge A and the attorney served as Assistant United States Attorneys in the same district for several years, and PACER lists the attorney as counsel in approximately 60 cases assigned to Judge A.

13, 2023, i.e., the judge was "upset" or "angry with X from the beginning." In support, Complainant recounts:

> [When X] asked for the standby attorney to represent him, … [Judge A] acted in a manner showing his frustration with going back and forth with [X]. He said the court had taken a long time based on [X's] going back and forth, but this was not the case, the court had put off the sentencing themselves, but he represented that this was on [X].

A review of the final revocation hearing transcript shows that Judge A expressed concern and frustration at "the amount of time" magistrate judges had spent holding hearings regarding X's multiple requests to represent himself, only for X to change his mind again. During the subsequent sentencing hearing, defense counsel explained to the court that X had changed his mind several times about being represented because he was frustrated with his attorneys' decisions. Judge A replied that while X's decisions "slowed the wheels of justice," the court's frustration with that conduct would not affect the sentence being imposed.

Complainant recounts that she "sat in on a couple of hearings" before X's final revocation and sentencing hearings commenced, and she reports that that Judge A "did not act angry at either of the previous hearings. He was only angry at my son." Specifically, Complainant contrasts Judge A's treatment of X with his treatment of the defendant in a prior sentencing proceeding:

> [Judge A] was kind to this white man … [who] preyed on young people …. Judge [A] showed concern for this man and even said he would pray for this man. … However, when my son got up for his [final revocation proceeding], [the judge's] behavior immediately changed to be one of hostility.

A review of the audio recordings of the two hearings reflects that Judge A's display of alleged "hostility" towards X at the beginning of the final revocation hearing was prompted by X's changing his mind—for the second time in the revocation proceeding and the fourth time in the criminal case—about being represented by counsel. After the initial exchange about X's request to be represented by counsel, Judge A's demeanor and tone were neutral, if stern, and markedly similar to his demeanor and tone throughout the other defendant's hearing.[3] Notably, contrary to Complainant's recollection, Judge A expressed concern for the defendant's victims, not for the defendant, and did not say "he would pray for [the defendant]."

Regarding the allegation that Judge A's remarks and demeanor at the beginning of the final revocation hearing constitute evidence of bias against X, 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 the defendant …. 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, 550-551 (1994). Judge A's remarks and demeanor in this case are entirely within the bounds of permissible conduct described in *Liteky*. Therefore, this aspect of the complaint is 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.".

The allegation that Judge A's treatment of X was demonstrably prejudicial and biased compared to his treatment of the other defendant is not supported by the record. This allegation is 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."

[3] Indeed, a review of the audio recordings of all sentencing hearings conducted by Judge A on that day shows that his demeanor and tone were similarly stern throughout all proceedings.

Erroneous, prejudiced, and biased decisions

Complainant complains that Judge A: failed to declare a mistrial, grant a continuance, or grant a new trial after the AUSA "committed a *Brady* violation"; denied X's trial motion to dismiss the case "due to the many inconsistencies and misconduct in the case"; delayed responding to X's ex parte emails "explaining why he felt his lawyers were not being effective" and then told X "you cannot write to the Judge directly"; "knew that the prosecution did not prove their case" but, because the judge and the prosecutors "were friends, the judge did not allow [X] the option of a new trial or to withdraw his plea … [without a] hearing or chance to address [the] reasons for [the denial]"; and, displayed his "animosity" by imposing harsh sentences and finding that X was a career criminal who "needed the long sentence because he did not learn anything."

Based on Judge A's rulings and conduct in X's cases, Complainant concludes the judge did not "afford meaningful judicial review … because of the color [X's] skin and because the judge knew him."

These allegations relate directly to the merits of decisions and procedural rulings and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). The conclusory assertions of improper motive, racism, and prejudice are 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."

Intemperate conduct towards Complainant's other son

Complainant's husband and her son ("Y") also attended the final revocation and sentencing hearings on February 16, 2023. Complainant recounts that during the sentencing hearing her husband "made a sound like clearing his voice." She states that Judge A mistakenly perceived that Y had said something to court and "yelled at [Y]" who then "decided to leave the court." Complainant alleges that "it [was] like the judge was looking for

something to be upset about, and appeared to be upset with [Y] and he does not even know him."

A review of the audio recording of the sentencing hearing reflects that after Judge A stated that, based on X's criminal history, the applicable advisory sentencing guideline was 210-260 months, the judge's attention was drawn to a noise in the public gallery. It is not possible to discern whether the noise was someone coughing or speaking, although the court reporter's notes in the transcript suggest that she also perceived that someone had spoken. The audio recording does show that Judge A's initial remarks to the individual were neutral in tone and volume, stating that the public was welcome in the courtroom but must be quiet and respectful so as not to distract the court. When the individual responded, the judge spoke more loudly and emphatically, explaining that it was his job to control the courtroom and warning the individual that they would have to leave the courtroom if they could not be quiet.

Even if Judge A misperceived someone coughing in the public gallery as someone addressing the court, mistakenly attributed the conduct to Y, and sternly admonished Y that it was improper to address the court from the public gallery, the U.S. 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).

This aspect of the complaint is 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."

Record tampering

Based on her recollection of the sentencing hearing, Complainant claims that some of Judge A's statements are missing from the transcript. Complainant concludes that either Judge A "asked the transcriptionist to omit this information or she did it on her own. Either way, this is wrong. … I know that it is illegal to alter or omit things in a court transcript."

A comparative review of the audio recordings and the transcripts reveals no evidence of omissions in the transcripts. The allegation of record tampering is 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."

An order dismissing the complaint is entered simultaneously herewith.

Edith H. Jones

EDITH H. JONES
Circuit Judge

Judicial Council
for the Fifth Circuit

Complaint Number: 05-25-90081

IN RE COMPLAINT OF [redacted] 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 Judge Edith H. Jones, filed September 23, 2025, dismissing the Complaint of [redacted] against [redacted] under the Judicial Improvements Act of 2002.

The order is therefore AFFIRMED.

Catharina Haynes

Catharina Haynes
United States Circuit Judge
For the Judicial Council of the Fifth Circuit