

FILED

October 29, 2025

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-26-90009

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

ORDER

Complainant, a state prisoner, has filed a complaint alleging misconduct by a United States District Judge sitting by designation in a civil proceeding in a district outside the Fifth Circuit.¹

Complainant alleges that the judge admitted that she lacks knowledge of the relevant state's law, but "has nonetheless proceeded to rule on core issues governed by [that state's] statutes," which "violates the standard of judicial competence and creates an appearance of impropriety under 28 U.S.C. § 455(a)."² In support, Complainant references two remarks by the judge during hearings related to discovery issues.

Contrary to Complainant's allegation, the judge's remarks were not an "admission of ignorance of governing law" or evidence of "confusion." Rather, the judge was questioning counsel about the practices and law in the applicable jurisdictions, a topic judges routinely inquire about during

¹ Rule 7 of the Rules of Judicial-Conduct and Judicial-Disability Proceedings provides that a complaint of misconduct against a judge sitting by designation may be filed in the subject judge's home circuit or the circuit where the alleged misconduct occurred.

² 28 U.S.C. § 455(a) provides, "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

hearings. This allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “frivolous” and/or “lacking sufficient evidence to raise an inference” of judicial incompetence.

Complainant also complains that, in violation of Canon 3(A)(3),³ the judge made a “demeaning, flippant, and prejudicial” statement during a hearing “in the context of a wrongful death claim brought by the family of a deceased incarcerated individual alleging serious constitutional violations.” In support, Complainant references an exchange in which the judge asked counsel why the case had not settled and whether the parties intended to try the case before a horror film company in light of the gruesome facts alleged in the complaint.

The Supreme Court has held that a “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). Moreover, as provided by Judicial Conference Committee on Codes of Conduct, Advisory Opinion 66, June 2009: “Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality. Strongly stated judicial views rooted in the record ... should not be confused with judicial bias.”⁴

The judge’s comments fall within the bounds of *Liteky*, and therefore this allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as

³ Canon 3(A)(3) provides, “A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge’s control, including lawyers to the extent consistent with their role in the adversary process.” *See* Guide to Judiciary Policy, Vol. 2A, Ch. 2.

⁴ *See* Guide to Judiciary Policy, Vol. 2B, Ch. 2, at 95.

“lacking sufficient evidence to raise an inference that misconduct has occurred.”

Complainant also makes several allegations about the merits of decisions, including that the judge:

- “improperly authorized the release of my privileged mental health records ... without notice, valid waiver, or opportunity for me to object” in violation of Canons 2(A) and 3(A)(4) of the Code of Conduct for United States Judges and 28 U.S.C. § 455(b)(1);⁵
- engaged in “judicial circumvention” and disregarded Federal Rule of Civil Procedure 12(b) in granting discovery of “highly sensitive, privileged, and irrelevant records”;
- allowed plaintiff to file “improper and abusive” amended complaints, which Complainant alleges “eroded the operative scope of the case,” “facilitated the invasion of privileged material,” “undermined judicial efficiency,” and “invited procedural confusion”;
- “authorized the compelled discovery and public disclosure of sealed materials from an active [state] criminal case ... despite clear legal and ethical barriers to such action” in violation of the state criminal law and Canons 2(A) and 3(A)(6) and with

⁵ Canon 2(A) provides in relevant part, “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 3(A)(4) provides in relevant part, “A judge should accord to every person who has a legal interest in a proceeding, and that person’s lawyer, the full right to be heard according to law.” 28 U.S.C. § 455(b)(1) provides that a judge should disqualify himself “[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.”

“extraordinary disregard for the constitutional rights of third parties”;⁶

- exhibited “one-sided process” by asking plaintiff’s counsel to draft a proposed order; and
- exhibited bias when “reacting to defense counsel’s report of eye-rolling by opposing counsel” during a Zoom hearing by stating “There are no eyes are [sic] being rolled. That’s a court order or at least a finding.”

To the extent 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). 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 bias 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.”

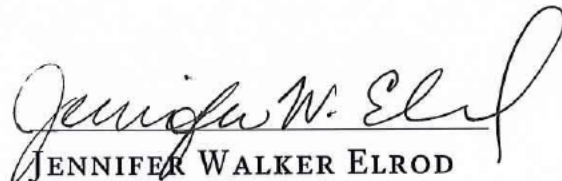
Complainant further complains that the judge “made or permitted highly prejudicial statements and filings that publicly and improperly imply the guilt of” Complainant in his pending state criminal prosecution in violation of Canons 2(A) and 3(A)(6), the Fifth and Fourteenth Amendments, and state confidentiality statutes. In support of this claim, Complainant references a statement made by the judge regarding the factual allegations in the civil proceeding during a hearing related to discovery issues.

Contrary to Complainant’s interpretation of the transcripts, the judge’s statement was not an expression of her own opinion about the facts of Complainant’s criminal prosecution or Complainant’s guilt, but rather a recitation of plaintiff’s factual allegations in the civil proceeding, which were laid out in plaintiff’s complaint and directly relevant to the discovery issue

⁶ Canon 3(A)(6) provides in relevant part, “A judge should not make public comment on the merits of a matter pending or impending in any court.”

pending before the court. The allegation that the judge made statements implying that Complainant is guilty 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.” The allegation that the judge allowed counsel to make improper statements or filings relates directly to the merits of decisions or procedural rulings and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

An order dismissing the complaint is entered simultaneously herewith.


JENNIFER WALKER ELROD
Chief Judge