

Judicial Council for the Fifth Circuit

Complaint Number: 05-26-90028

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

ORDER

Complainant, a civil litigant, has filed a complaint alleging misconduct by a United States District Judge in two cases.

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

Erroneous decisions or procedural rulings

Complainant complains that the judge “failed to apply the law and ensure my right to be heard, in violation of Canons 3(A)(1) and 3(A)(4) of the Code of Conduct for United States Judges.¹ In support, Complainant claims that the judge:

- “overlooked key evidence” and “violated de novo review standards, prejudicing my case”;

¹ Canon 3(A)(1) provides that “[a] judge should be faithful to, and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.” Canon 3(A)(4) provides that “[a] judge should accord every person who has a legal interest in a proceeding, and that person’s lawyer, the full right to be heard according to the law.” *See* Guide to Judiciary Policy, Vol. 2A. Ch. 2.

- “dismissed ... as ‘merely evidence’” a 2019 administrative decision “which found religious harassment”;
- “dismissed evidence that [counsel for a non-party] falsely claimed [the defendant-Catholic chaplain] was counseled” after the 2019 decision;
- stayed discovery and “reject[ed] additional depositions,” thereby “further den[ying] me a fair hearing”;
- “remark[ed] that government attorneys ‘regularly sign documents without knowing what they are signing,’” and thereby “excused agency misconduct, undermining accountability”;
- “mischaracterized the case as involving the [Equal Employment Opportunity Commission], ... indicating inattention to critical details”;
- “sanctioned my attorney \$402 for unintentionally violating Local Rule 83.10, despite prior Fifth Circuit reversal of similar sanctions.”

These allegations relate directly to the merits of decisions or procedural rulings and are therefore 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.

Egregious and hostile treatment of Complainant’s attorney

Complainant complains that during a hearing held in June 2022, the judge made “demeaning” and “intimidating” remarks to Complainant’s attorney, thereby “chilling advocacy and prejudicing my case” in violation of Canon 3(A)(3).² Complainant submits that the judge’s “history of reversed

² Canon 3(A)(3) provides that “[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.”

sanctions suggests a pattern of such conduct, undermining judicial decorum.”

The Judicial Conference Committee on Codes of Conduct has addressed the propriety of a judge’s expressions of dissatisfaction and annoyance in the context of judicial bias and disqualification. Citing *Liteky v. U.S.*, 510 U.S. 540 (1994), the Committee on Codes of Conduct advises that “[s]trongly stated judicial views rooted in the record, a stern and short-tempered judge’s efforts at court administration, expressions of impatience, dissatisfaction, annoyance and even anger directed to an attorney or a party should not be confused with judicial bias.” Advisory Opinion 66, June 2009.³

In *Liteky*, the Supreme Court of the United States held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards [a litigant] 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*, 510 U.S. at 551. The Court also 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.” *Id.*, at 555-556.

A review of the record does not support Complainant’s assertion that the judge’s critical remarks and demeanor rise to the level of “egregious” or “hostile” under Rule 4(a)(2)(B). Read in context, the judge’s remarks were expressions of frustration or incredulity regarding Complainant’s attorney’s conduct, arguments, and litigation tactics. Under these circumstances, the judge’s remarks were, at most, “stern and short-tempered” efforts at courtroom administration and/or “strongly stated judicial views rooted in

³ Guide to Judiciary Policy, Vol. 2B, Ch. 2, at 92.

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.”

To the extent Complainant is complaining about the merits of the judge’s assessments of the attorney’s arguments and litigation tactics, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). As to the allegation that reversals of the judge’s decisions imposing sanctions constitute evidence of a pattern of misconduct, an appellate court’s reversals of a district judge’s decisions, without more, do not constitute evidence of misconduct, and the 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.”

Failure to disqualify and lack of impartiality

Complainant complains that the judge violated Canon 3(C)(1)⁴ by failing to disqualify himself sua sponte in a case in which his impartiality might reasonably be questioned. In support, Complainant notes that the judge has reported that he is a member of a Catholic fraternal service organization, and Complainant claimed that the defendant-Catholic chaplain subjected him to religious discrimination. Complainant submits that the judge’s lack of impartiality was evident in the following conduct during the hearing in June 2022:

- The judge “failed to scrutinize [the] evidence of religious animus” displayed by the defendant-Catholic chaplain towards Complainant, “minimiz[ing] [the defendant’s] Catholic-centric conduct as a ‘personality conflict’.”
- The judge’s “acknowledgment of a ‘very good case’ contrasted with his summary judgment ruling, suggesting prejudgment.”

⁴ Canon 3(C)(1) provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned[.]”

- The judge referred to the defendant-Catholic chaplain as “Father” and to Complainant, a Baptist chaplain, as “Brother,” “despite no comparable title applying to me, echoing the case’s allegations of Catholic favoritism.”

To the extent these allegations relate directly to the merits of decisions or procedural rulings, including the implied decision not to disqualify *sua sponte*, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). The judge’s use of honorifics—which, even if incorrect, appear to be an effort by the judge to show respect towards Complainant — is insufficient to raise an inference of “Catholic favoritism.” 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.”

Improper pressure to pursue settlement

Complainant complains that the judge improperly “pressured” the parties to settle the case, “citing a ‘three-year naughty list’ with the Fifth Circuit.” Complainant submits that the judge thereby “prejudiced my right to fair process” and “undermined judicial integrity” by “prioritizing expediency over fairness” in violation of Canon 3(A)(5).⁵

The Judicial Conference Committee on Codes of Conduct, Advisory Opinion No. 95, June 2009, states: “Discussion of the possibility of settlement is a common practice at pretrial and status conferences and is expressly sanctioned in general terms by the Federal Rules of Civil Procedure. ... Nor does it necessarily offend Canon 3C(1) [of the Conduct for United States Judges] for a trial judge to comment on the strengths and weaknesses of the parties’ case before trial.”⁶

⁵ Canon 3(A)(5) provides that “[a] judge should dispose promptly of the business of the court.”

⁶ Guide to Judiciary Policy, Vol. 2B, Ch. 2, at 165-166.

A review of the record reflects that nothing in the judge’s remarks about settlement appear contrary to Advisory Opinion No. 95. Therefore, this allegation 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.”

Regarding the judge’s remarks about how long the case had been pending, a review of the record reflects that during the hearing in June 2022, he remarked several times that the case had been pending for over three years.

These remarks are not sufficient evidence to raise an inference that the judge was “prioritizing expediency over fairness.” Rather, they demonstrate the judge’s dissatisfaction with how long the case was pending. *See Liteky*, 510 U.S. 540, 555-556 (1994) (judicial bias or partiality are not established by “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”). Therefore, this allegation is also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

The complaint is DISMISSED. An unredacted private order is entered simultaneously herewith.



JERRY E. SMITH
United States Circuit Judge

FILED

March 11, 2026

Lyle W. Cayce
Clerk

**Judicial Council
for the Fifth Circuit**

Complaint Number: 05-26-90028

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 Jerry E. Smith, filed November 26, 2025, dismissing the Complaint of [REDACTED] against [REDACTED]

[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