

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JUN 06 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-16-90079 and 05-16-90080

MEMORANDUM

Complainant, a *pro se* litigant, has filed a judicial misconduct complaint against the subject United States District Judge and the subject United States Magistrate Judge regarding two proceedings. The undersigned notes that complainant was given an opportunity to clarify numerous incoherent claims and conclusory assertions, but her response was similarly devoid of clarity and supporting evidence.

- **Case 1 (personal injury lawsuit against retailer)**

Complainant alleges that the magistrate judge: intentionally permitted the defendant to hold a deposition at a county court “to prejudice [that court’s] judges” against complainant in a pending lawsuit against the county; “allowed defense counsel to make humiliating jokes” about complainant because the magistrate judge “exerts that the county are [sic] of more importance than an indigent party receiving food stamps”; and failed to recuse herself for conflict of interest (i.e., the magistrate judge was formerly an assistant district attorney for the county).

To the extent that these allegations relate directly to the merits of the magistrate judge’s decisions, including failure to recuse, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of retaliatory motives and bias are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant reports that during hearings regarding income and assets she omitted from her application to proceed *in forma pauperis*, she told the judge she was a student at a Christian college and a local gospel musician. She alleges that the judge “got really upset and started humiliating me in front of the court. Specifically, by stating that he saw me limp into the court room but did not when I left. Moreover, that I had hidden my new car from the court.”

A review of the audio-recordings of the hearings shows that neither of these questions arose from complainant’s reporting that was a student at a Christian college and a gospel musician. The judge questioned complainant about unreported assets after it became evident that she might have lied on her IFP application. Similarly, after the judge saw complainant walking without difficulty outside the courthouse, he questioned her earlier testimony that she had difficulties walking and standing. The audio-recordings also show that the judge was even-tempered and courteous throughout the hearings.

Regardless, 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 [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 v. United States, 510 U.S. 540, 551 (1994). The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further asserts that the judge: instructed his courtroom deputy to perform “unethical” research into income and assets; allowed defense counsel to make “number signs” to the courtroom deputy; discriminated against “[me] because of my female sex to state that the male sex rule [sic] or whose your daddy b****”; made “false and dishonest” findings; and dismissed her lawsuit “for personal reasons and/or gain” and for “discriminatory reasons upon the basis of religion and sex” (i.e., the judge is “anti-Christian” and retaliated against her for having filed a sex discrimination lawsuit against a state judge).

To the extent that these allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other

respects, such frivolous and conclusory assertions are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant reports that when she attempted to serve a subpoena on one of the defendant's employees, the "subpoena return proof of service was returned back as unexecuted, which I feel that [the judge] or [the magistrate judge] never allowed it to be served as that witnesses [sic] address was provided by opposing counsel."

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

- **Case 2 (lawsuit against county)**

Without presenting any evidence in support of her claims, complainant alleges that when she filed a federal lawsuit against the county in October 2015, the magistrate: interfered with the random assignment of cases to ensure that the lawsuit was assigned to her; fraudulently signed "the many unsupported text orders being entered in the case" under the presiding district court judge's name; "allowed defense counsel to make humiliating jokes" about complainant; and did so because of "some financial interest or other personal gain in mediating or dismissing cases existing against [county]."

Such conclusory allegations are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).


Complainant further submits that she "feels" that the magistrate judge engaged in *ex parte* communication with a former county judge "on the actions I have filed against them once again."

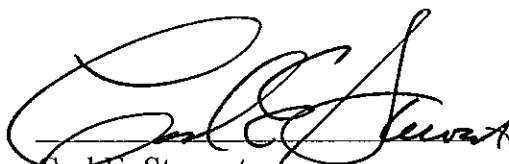
To the extent that complainant is alleging *ex parte* communication with the former county judge, the prohibition against *ex parte* communication is aimed at communication between the court and a party in litigation. The former county judge is not a party to the litigation, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that complainant is alleging that the magistrate judge was trying to influence the outcome of complainant's pending county court litigation against the county, such a conclusory assertion is insufficient to support a finding of

judicial misconduct, and is therefore also subject to dismissal under 28 U.S.C. § 352(b) (1)(A)(iii).

Judicial misconduct proceedings are not a substitute for the normal appellate review process, nor may they be used to obtain reversal of a decision or a new trial.

An order dismissing the complaint is entered simultaneously herewith.

 , 2016


Carl E. Stewart
Chief Judge

JUL 27 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90079 and 05-16-90080
Petition for Review by [REDACTED]
of the Final Order Filed June 6, 2016
Dismissing Judicial Misconduct Complaint 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 Chief Judge Carl E. Stewart, filed June 6, 2016, dismissing the Complaint of [REDACTED] against [REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

7-18-2016
Date

Priscilla R. Owen
Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit