

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

AUG 09 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-17-90082

MEMORANDUM

Complainant, an attorney and pro se litigant, has filed a judicial misconduct complaint against the bankruptcy judge who conducted a mediation in complainant's bankruptcy and two related adversary proceedings, which are presided over by another bankruptcy judge.¹ The mediation resulted in a handwritten compromise agreement signed by the parties, which included complainant, the defendants, and complainant's parents.

The undersigned first notes that as a lawyer, complainant knows or should know "of the standards for stating a viable claim of judicial misconduct," and should also be "well aware that any court filing must be based on good faith and a proper factual foundation." *See In re Complaint of Judicial Misconduct*, 550 F.3d 769 (9th Cir. 2008). The complaint, which contains a number of misrepresentations and inaccuracies, falls well short of these standards, and complainant's credibility is seriously degraded as a result. The undersigned has found no support for any of the allegations in the record.²

Complainant alleges that opposing counsel has a "long, close relationship to [the judge] that would have disqualified her from mediating," which was not disclosed to complainant. Complainant also claims that the judge was "not neutral," in that the actions she took in the course of the mediation were done "to financially benefit"

¹ The defendants in the adversary proceedings are complainant's sisters, brother-in-law, and four related family companies.

² Indeed, some of complainant's claims are directly contradicted by the record. For example, complainant alleges that an order of the bankruptcy judge handling her case provided for a two-day mediation, which it did not.

opposing counsel and his clients, whom complainant claims are engaged in a conspiracy against her. Specifically, she says that the judge improperly “implement[ed]” the demands of the attorneys rather than their clients’ wishes, that the judge told complainant not to file a motion for approval of the mediation agreement (said failure to file being later used against her by the opposing parties), that the judge advised complainant’s sister how to file taxes to hide her alleged theft of complainant’s dividends, that the judge allowed complainant’s father to participate in the mediation despite knowing that he had no capacity to do so, and that “someone” changed a court document after it was filed in Pacer, which she says was used to convert her Chapter 11 bankruptcy to Chapter 7. Complainant provides no evidentiary support for any of these speculative allegations.

To the extent complainant objects that the judge did not disclose her past affiliation with the lawyer or that she did not *sua sponte* recuse herself from the mediation, or that her implicit decision to allow the father to participate in the mediation was incorrect, the allegations are subject to dismissal as directly related to the merits of a decision or procedural ruling under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent complainant alleges, generally and specifically, that the judge was working to further defendants’ alleged scheme to financially ruin complainant for the benefit of the defendants and their lawyers, conclusory assertions of conspiracy and/or bias lack sufficient evidence to raise an inference that misconduct has occurred, and the allegations are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations are so lacking in indicia of reliability that no further inquiry is warranted, and they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also alleges that the judge threatened her during the mediation to “intimidate [her] into complying to outrageous demands in a mediation no bankruptcy court could ever approve.” Specifically, complainant claims that the judge said that complainant “would have to agree to the terms [the other side] put forth or else” the judge would call the bankruptcy judge and tell him that complainant was “refusing to mediate.” Complainant also asserts that the judge told her the mediation was “a mafia hit and you will comply or else it will be worse for you and your daughter,” and that the judge “stated

that [complainant's] daughter was trying to get into medical school and that 'they' could keep her out of medical school or get her kicked out once she got in." Complainant also alleges that the judge told both complainant and her parents that they could never see each other again.³

Complainant's unsupported allegations of the judge's threats are facially incredible, and, especially in light of complainant's numerous misrepresentations throughout the complaint, are so lacking in indicia of reliability that no further inquiry is warranted, and they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant claims that the bankruptcy judge handling her case formed "disdain" for and "bias" against her as a result of an improper ex parte phone call between the bankruptcy judge and the mediating judge. She alleges that the bankruptcy judge characterized her as "unwilling to cooperate, unwilling to negotiate, [and] litigious," which she says "is an absolute falsehood and he had formulated this opinion by way of [the mediating judge] and her position as a bankruptcy judge with [the mediating judge] prosecuting me and holding ex parte contact with [the bankruptcy judge]." Complainant asserts that the bankruptcy judge admitted to the call, but the undersigned's review of the record uncovered only that the bankruptcy judge said he had spoken with the mediating judge regarding whether she was available to mediate. The bankruptcy judge further said that he would not discuss the mediation with the mediating judge other than regarding whether it was completed, which directly contradicts complainant's allegations of an admission to an improper phone call.

To the extent complainant alleges that the judge biased the bankruptcy judge against her by the alleged phone call, conclusory assertions of bias and/or retaliation lack sufficient evidence to raise an inference that misconduct has occurred and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations are so lacking in indicia of reliability as to warrant dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

³ This final allegation is belied by a provision in the settlement agreement which allowed for complainant and her parents to meet, subject to a counselor's discretion.

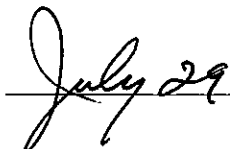
Finally, with regard to the mediation process, complainant protests that there was no mediation contract “stating the terms of the mediation,” that the mediation lasted only one day instead of two, that the judge “refused” to look at three boxes of documents, a trial court transcript and “declarations from two attorneys” that complainant brought to the mediation, and that complainant was isolated from the other parties over the course of the mediation, implying that the isolation allowed the judge to misrepresent what the parties were saying to each other. Complainant also asserts that the judge inappropriately met alone with the attorneys for the defendants as part of “another attempt for the attorneys to defraud” their clients. Complainant provides no legal or evidentiary support for her claims that the mediation process was improper or that any meeting the judge had with the attorneys was for improper purposes or contrary to the wishes of their clients.

To the extent complainant alleges that it was misconduct for the judge not to provide or require a contract setting forth the terms of the mediation, to conduct the mediation over the course of one day instead of two, to not review the documents, or to put the parties in separate rooms, the allegations are subject to dismissal as directly related to the merits of decisions or procedural rulings under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, conclusory assertions of improper collusion with the attorneys lack sufficient evidence to raise an inference that misconduct has occurred, and are 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.


Carl E. Stewart
Chief Judge

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FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-17-90082

Petition for Review by [REDACTED]
of the Final Order Filed August 9, 2017

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 Stewart, filed August 9, 2017, dismissing the Complaint of [REDACTED] against [REDACTED], under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

OCTOBER 18, 2017
Date


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