

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**  
JAN 14 2019  
FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

---

Docket Number: 05-18-90031

---

MEMORANDUM

Complainant, bankruptcy petitioner, has filed a judicial misconduct complaint against the subject United States Bankruptcy Judge in a bankruptcy proceeding and an adversary proceeding. Complainant alleges that the judge's decisions, and his conduct during hearings, demonstrated racial bias, "disrespect," "condescension," and "hatred and disdain" against complainant and his attorney who "both happen to be Black", and favoritism towards the "white" creditor/plaintiff and his attorney.

For example, complainant asserts that the judge "violated the law" in the bankruptcy proceeding by: holding a hearing on the creditor's motion to lift stay despite purported deficiency in service; improperly granting the motion during the scheduled preliminary hearing thereby depriving complainant of an "evidentiary hearing to give me a chance to testify"; and erroneously and improperly denied a motion to recuse. He further alleges that the judge failed to ask creditor's attorney to "explain the "law or other legitimate legal reasons supporting the motion [to lift stay]", but "openly attacked my lawyer."

A review of the audio-recording of the hearing indicates that complainant is referring to the judge's asking the attorney to address the court regarding "defenses" raised in complainant's response to the creditor's motion. There was nothing improper in the judge's asking counsel to explain the law in support of a pleading, and the judge was courteous and even-tempered throughout the hearing.

Regarding the adversary proceeding, complainant complains that the judge signed an erroneous order prepared by plaintiff's counsel, which resulted in complainant's accruing attorney's fees preparing a motion to correct the order. He protests that "the judge changed the order, but refused to give my lawyer attorney's fees for this and all other deliberate 'blunders' [of plaintiffs' counsel]." Complainant further asserts that during an August 2017 hearing, the judge "displayed ... biases and prejudice, favoritism and antagonism."

To the extent that the 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, a review of the record (including audio-recordings) shows that there is insufficient evidence to raise an inference that misconduct has occurred, and the allegations that the judge demonstrated racial bias, "disrespect," "condescension," and "hatred and disdain" against complainant and his attorney are therefore 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.

January 9, 2019

  
\_\_\_\_\_  
Carl E. Stewart  
Chief Judge