

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Numbers: 05-19-90020 through 05-19-90022

U. S. COURT OF APPEALS
FILED

FEB 22 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a pro se litigant and an attorney, has filed a convoluted judicial misconduct complaint against the subject Chief United States District Judge, United States District, and United States Magistrate Judge regarding their alleged misconduct in complainant's employment discrimination lawsuit against the a federal government agency.¹ She alleges that the chief judge (who originally presided over the case), the judge (to whom the chief judge reassigned the case), and the magistrate judge (to whom preliminary matters were referred throughout the proceeding) "railroaded" her case by using their judicial offices to obtain special treatment for the "defendant" (i.e., the Chief ALJ), and/or having improper discussions with the Chief ALJ, and/or treating complainant in a demonstrably egregious and hostile manner, and/or demonstrating "racial bias conflict of interest" in favor of the Chief ALJ.

Complainant submits that three subject judicial officers and the Chief ALJ are friends because they "run in the same professional and social circles," and because the magistrate judge and the Chief ALJ purportedly "reside in the same neighborhood about 5 minutes away [from each other]" and are both African American. She offers no evidence in support of these alleged friendships.

Complainant claims that the chief judge "inadvertently blurted to an EEO attorney that she hates plaintiff's EEO cases" and, despite this distaste for employment discrimination matters, the chief judge intervened in the clerk's random assignment of

¹ The undersigned notes that the docket records that the agency commissioner was the sole defendant in the proceeding, however throughout the complaint complainant refers erroneously, and self-servingly, to a Chief Administrative Law Judge ("Chief ALJ")—whose conduct is, in part, the basis for complainant's employment discrimination claims—as "the defendant" or "the principal defendant."

cases to ensure that complainant's case regarding the Chief ALJ's conduct was assigned to her docket. She offers no evidence in support of these assertions.

Complainant further alleges that the chief judge intentionally "assigned [the magistrate judge] to pretrial matters ... despite the fact that [the magistrate judge], who is African American, strongly supports reverse discrimination in favor of African Americans ... which is a direct conflict of interest to [my] case that fights against such reverse discrimination." In support of this claim, complainant refers to an article published by a Bar Association in which the magistrate judge purportedly "admitted" that she "supports reverse discrimination in favor of African Americans."²

Such conclusory assertions lack sufficient evidence to raise an inference that misconduct has occurred and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also protests that "[d]espite such clear conflict of interest and personal bias ... requiring her to disqualify herself where her impartiality might reasonably be questioned, [the magistrate judge] as affirmed by [the chief judge], disregard[ed] such conflict of interest."

To the extent that these allegations relate directly to the merits of the magistrate judge's decision not to disqualify herself sua sponte, and the chief judge's and the magistrate judge's decisions regarding complainant's motions to disqualify, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertion that the decisions constituted "special treatment" of the defendant lacks sufficient evidence to raise an inference that misconduct has occurred and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant contends that the magistrate judge's "bias in favor of African American women defendants and support of them was borne out in all her actions from the start." Referring to a hearing on her attorney's motion to withdraw, complainant recounts that the magistrate judge "was emotional [sic] hostile to [me]"

² The undersigned notes that a review of the article—which complainant filed in the underlying proceeding in support of a motion to recuse—shows that the magistrate judge expressed no opinion about reverse discrimination.

and “systematically put in place rulings to railroad [my] case.” For example, the magistrate judge “summarily” granted the motion to withdraw and denied her motion for extension of discovery deadlines “without any consideration of adverse impact on [my] case.” Complainant further claims that the magistrate judge “aggressively threatened to dismiss [my] case when [I] expressed the substantially negative impact of [her] summary termination of [my] counsel ... [The] threat was accompanied by her self-satisfied hostile facial expressions making clear of [sic] her hatred of [me].”

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

A review of the audio-recording of the hearing demonstrates that the magistrate judge did not display “emotional hostility” or “aggression” towards complainant. Given that the hearing was not video-taped, the undersigned is unable to determine whether the magistrate judge’s facial expressions were “self-satisfied” or denoted “hatred of” complainant. However, to the extent that the magistrate judge’s tone or demeanor might have indicated “frustration or annoyance” with complainant’s arguments or conduct, in Liteky v. U.S., 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court acknowledged that federal judges occasionally express “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” from a finding of judicial bias or, as in the instant situation, judicial misconduct.

The allegations that the magistrate judge was biased against, or displayed hostility and hatred towards, complainant during the hearing are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further contends that “thereafter, the magistrate judge continued her biased rulings on bizarre findings of fact.” She also surmises the magistrate judge engaged in ex parte communication with the Chief ALJ who, complainant claims, “had

decided to retire during the pendency of [my] case ... Such plan was not announced publicly by the agency and it was not known to employees in the agency. However, [the magistrate judge] knew ... which only [the Chief ALJ] could have disclosed [to her].” Complainant proposes that “not coincidentally, just around the time [the magistrate judge] issued her report and recommendations, [the Chief ALJ] decided not to retire because she knew that she had the case in her pocket.”

To the extent that these allegations relate directly to the merits of the magistrate judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of ex parte communication lack sufficient evidence to raise an inference that misconduct has occurred and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Referring to the chief judge’s special order reassigning 239 civil cases, including complainant’s matter, from the dockets of other United States District Judges to the docket of the newly-appointed judge, she protests that the magistrate judge improperly issued a report and recommendations “when she had been removed 5 months earlier per special order.”

The undersigned notes that complainant is mistaken: the chief judge’s order did not vacate the referral of preliminary matters to the magistrate judge. The allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant surmises that “in a mere 6 days” the judge, who “ha[d] never had a federal EEO case before her,” adopted the magistrate judge’s recommendation to grant the defendant’s motion for summary judgment, “discussed nothing de novo,” “chose to ignore any and all relevant evidence against defendant,” and intentionally denied complainant’s due process rights by prematurely entering judgment and closing the case “for the clear purpose of protecting [the judge’s] friend, [the Chief ALJ].”

To the extent that these allegations relate directly to the merits of the judge’s decision, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of improper motive lacks sufficient evidence to raise an inference that misconduct has occurred and is 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.

The undersigned notes that in pleadings in the underlying case, complainant describes herself as “a licensed lawyer for over 20 years.” As an experienced attorney 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 instant complaint, which is replete with unsupported and self-serving allegations, falls well short of these standards.

Complainant is WARNED that should she file a further merits-related, conclusory, or frivolous complaint, her right to file complaints may be suspended and, unless she is able to show cause why she should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.

February 18, 2018



Carl E. Stewart
Chief Judge

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

APR 03 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

No. 05-19-90020 through 05-19-90022
Petition for Review by [REDACTED]
of the Final Order Filed February 22, 2019,
Dismissing Judicial Misconduct Complaint

Against [REDACTED]

[REDACTED]
Under the Judicial Improvements Act of 2002.

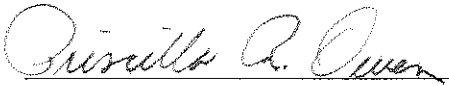
ORDER

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 February 22, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

3-29-2019
Date


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