

FILED

November 19, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-25-90005

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge in a civil proceeding.

Undisclosed conflict of interest

One of the Defendants in the underlying proceeding (“Case 1”) was represented by Law Firm X. Complainant submits that “publicly available records” show that the judge “worked as a lawyer for [Law Firm X] for several years prior to being elected [sic] as a judicial official.” In support of this claim, Complainant provided a copy of a Westlaw Edge “docket analytics” report showing that the judge appeared as an attorney employed by Law Firm X in seven cases/appeals.

Based on this information, Complainant alleges that by failing to recuse himself sua sponte from a case in which his “impartiality might reasonably be questioned,” and by intentionally concealing his prior association with Law Firm X, the judge violated Canons 3C(1)(a) and (b).¹ She further alleges that

¹ Canon 3C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

the conflict of interest was evident in the judge's bias towards his former law firm during a motion hearing held in October 2023, and in the judge's dismissal of her case.

Contrary to these claims, a Westlaw Edge "litigation analytics" search returns a list of all federal cases/appeals in which the judge appeared as counsel with Law Firm Y, including the seven matters cited by Complainant in which attorneys with Law Firm X represented other parties. This employment information corresponds with the judge's answers in a Questionnaire for Judicial Nominees completed in connection with his nomination to the federal bench.

This aspect of the complaint is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Erroneous, biased, harassing, and retaliatory rulings

Complainant alleges that the judge demonstrated bias in favor of the Defendants by erroneously and "purposefully" denying her motions to remand and for default judgment. She further complains that despite knowing that she lacked transportation because the Defendants had "stolen" her vehicle, the judge "harassed [me] repeatedly" by issuing two orders instructing her to show cause why she would not be able to attend the scheduled in-person motion hearing in October 2023.

Complainant also submits that the judge issued the show cause orders in retaliation for her sending a "private and confidential complaint" to the chief district judge in July 2023, complaining, in part, that the judge had unfairly and improperly threatened to terminate her case if she failed to appear in-person. In

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness[.]

Guide to Judiciary Policy, Vol. 2A, Ch. 2, <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>, at 8.

addition, Complainant contends that this retaliatory conduct violated Rule 4(a)(4) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings which provides that “[c]ognizable misconduct includes retaliating against complainants ... for reporting or disclosing judicial misconduct[.]”

Complainant provided a copy of her letter to the chief district judge. However, there is nothing in the letter to indicate that Complainant sent a copy to the judge, there is no record of the letter being entered on the docket, and Complainant does not explain how the judge knew about the letter before issuing the show cause orders in September 2023.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any allegation of retaliatory conduct appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and 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 conduct during motion hearing in October 2023

Complainant alleges that, in violation of Rule 4(a)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the judge’s conduct during the motion hearing in October 2023 was “demonstrably egregious and hostile” and “created an intimidating atmosphere towards [me].” For example, Complainant asserts that the judge:

- harassed her by asking “vexatious” questions and “demanding specifics” about her asserted lack of transportation to attend in-person hearings;
- “ignored material facts” and “intentional[ly] misrepresent[ed] case facts”;
- “attempt[ed] to coerce admissions” from Complainant by asking her about her prior litigation history in the federal courts;

- “engag[ed] in inappropriate legal tactics, such as abandoning the court to perform ‘discovery’” and “return[ing] with printouts to prove his theories about me,” i.e., after a recess, the judge returned to the bench with printed records of Complainant’s federal litigation history;
- “referenced [those] unrelated cases” and “misrepresented the case facts ... to discredit, humiliate, and shame [me]” and to discredit “[my] character”;
- “intimidated” Complainant by referring to a fellow judge’s adverse findings in Case 2, and “made unwarranted assertions that his [fellow judge] supported his behavior”;
- intentionally “misrepresent[ed] the number of pleadings [Complainant] filed”;
- falsely claimed she “refused to attend the in-person case management conference” and “repeatedly fail[ed] to respond to court orders”;
- falsely accused her of being responsible for “an 8-month delay in case management” to cover-up his own “persistent delays”;
- stated prejudicially and erroneously that Complainant had “advanced frivolous arguments in multiple pleadings”;
- “ma[de] inappropriate personal remarks,” e.g., characterized Complainant’s responses to the court’s show cause orders as “non-responsive” and “void of specifics” or “good reason”; noted that Complainant’s prior federal lawsuits had been dismissed; and, remarked that her claim that this was her first federal lawsuit was “dishonest.”
- “fail[ed] to uphold a neutral authority” by “refus[ing] to permit [defense counsel] to engage as appropriate when it was necessary even stopping them to speak on their behalf”; and,

- conducted the hearing “as if it were a case where he was attempting to prove himself on a trial [sic] in that he took on the role of an attorney in his performance.”

Complainant further asserts that the judge’s negative remarks about her conduct as a litigant violated Canon 2B which provides that “[a] judge should not testify voluntarily as a character witness,” and violated Canon 3A(3) which provides that a judge should be respectful to litigants, including “avoiding comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.”²

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of improper motive appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and 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 that Complainant alleges that the judge’s negative remarks about her conduct as a litigant violated Canon 3A(3) and constituted evidence of bias and prejudice, 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 party] 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, 550-551 (1994). A presiding judge’s remarks about a litigant’s conduct do not violate Canon 2B which is aimed at a judge testifying as a character witness in a case other than in response to an official summons.³

² See Commentary on Canon 3A(3), *Id.*, at 10.

³ See Commentary on Canon 2B which provides that a judge may testify “in response to an official summons” (*Id.*, at 4), and Advisory Opinion No. 9 which provides that a judge

This aspect of the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

As to Complainant's claims that she was the subject of judicial "harassment," "intimidation," and "disrespect" during the hearing in October 2023, a review of the audio-recording shows that the judge repeated or rephrased questions because he found that Complainant's answers to his initial inquiries were non-responsive and evasive, and he stated for the record his detailed reasons for dismissing the case based on Complainant's conduct as a litigant. While the judge's tone was stern throughout the proceeding, he maintained a calm demeanor and was patient and respectful towards Complainant.

These claims are therefore also 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."

Undue delay/dereliction of duty

Complainant alleges that the judge was responsible for "an 8-month delay in case management" which "caused needless confusion" and she submits that this "persistent delay" demonstrates "dereliction of duty." However, a review of the docket shows that final judgment was entered eight months after the case was opened, and there is no evidence of judicial delay in that eight-month period.

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

should only testify as a character witness in response to a subpoena (<https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/published-advisory-opinions>, at 17).

Improper communication with counsel in a pending appeal

A review of the audio-recording of the motion hearing shows that Complainant told the court that the instant case was her “first time”⁴ in federal court. In questioning her about that claim, the judge stated he was “looking at some cases” that showed Complainant had previously filed several pro se lawsuits in federal court. According to Complainant, when the judge returned to the bench after a recess, he had printouts of information pertaining to her federal litigation history, including Case 2. In reciting his finding that there was a clear record of delay attributable to Complainant in the instant case, the judge remarked that a similar record of delay was found by his fellow judge in Case 2.

Complainant alleges that the judge had “pre-existing knowledge” of “specific details” of Case 2 via “routine communication with” trial/appellate counsel. She further contends that his recitation of his fellow judge’s adverse findings in Case 2, and his “false accusations” aimed at discrediting Complainant in the instant case, “indicated an apparent intent to harm [my] reputation and due process rights” in Complainant’s appeal from judgment in Case 2.

Complainant presents no evidence of ex parte communication between the judge and counsel, and she points to no “specific details” about Case 2 that were not accessible via the public docket. Complainant’s additional assertion that the judge’s recitation of the adverse findings in the Case 2 demonstrated an “apparent intent to harm [my] reputation and due process rights” in the pending appeal is similarly unsupported.

The conclusory assertions of ex parte communication and improper motive are 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.”

⁴ There is no official transcript in the record. All transcribed statements from the audio-recording presented herein were prepared solely for the purpose of analyzing the instant complaint.

Violations of Canons 2B, 3A(4), and 3A(6)

Complainant alleges that the judge violated Canon 3A(4) by “initiat[ing] communications [with] a ruling judge in [an] impending or pending matter,”⁵ i.e., she claims the judge “stated that he had been in routine communication with” the presiding judge in Case 2 in which Complainant had recently filed a Notice of Appeal. A review of the audio-recording of the motion hearing shows that the judge made no such statement; rather, he indicated that he found Case 2 while researching Complainant’s federal litigation history “quickly during the recess” in the hearing. There is nothing in the record to support Complainant’s contention that the judge communicated with the presiding judge in Case 2 either prior to or during the motion hearing.

Complainant further alleges that the judge violated Canon 3A(6) by commenting publicly on the merits of a pending matter,⁶ i.e., “with full knowledge” that an appeal from Case 2 was pending, the judge made the “unwarranted assertion” that the presiding judge in Case 2 “agreed with his behavior and his theories” in the matter before him. Contrary to Complainant’s claim, the judge does not appear to have made any comment about the merits of Case 2 or the pending appeal.

Complainant also complains that the judge violated Rule 2B by “[lending] the prestige of judicial office to advance the private interests”⁷ of the presiding judge in Case 2. Complainant appears to be asserting that the

⁵ Complainant cites the following portion of Canon 3A(4): “...a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.” See <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>, at 6.

⁶ Canon 3A(6) provides: “A judge should not make public comment on the merits of a matter pending or impending in any court. ... The prohibition on public comment on the merits does not extend to public statements made in the course of the judge’s official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.” See *Id.*, at 7.

⁷ *Id.*, at 3.

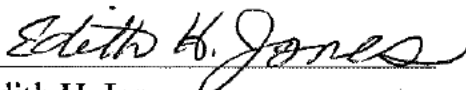
presiding judge in Case 2 had a “private interest” in her judgment being affirmed on appeal, and that the judge knowingly and improperly advanced this interest by citing her adverse findings about Complainant’s conduct as a litigant. However, it is common practice for a judge making adverse findings to cite, on the record, similar adverse findings in a litigant’s prior federal cases.

In addition, Complainant asserts that the judge improperly advanced the private interests of “other parties (that he named),” and used his “judicial position or title to gain advantage in litigation involving a friend.”⁸ However, because Complainant does not identify the “other parties” or the “friend” involved in litigation, it is not possible to assess these claims.

The allegations that the judge violated Canons 2B, 3A(4), and 3A(6) are therefore subject to dismissal under 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.”

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.


Edith H. Jones
United States Circuit Judge

Nov. 18, 2024

⁸ Commentary on Canon 2, *Id.*, at 4.

FILED

February 13, 2025

Lyle W. Cayce
Clerk

**Before the Judicial Council
of the Fifth Circuit**

[REDACTED]

Petition for Review by [REDACTED]
Regarding Complaint of Misconduct and/or Disability Against
[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

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 Edith H. Jones, filed November 19, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] under [REDACTED] the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Feb. 12, 2025

DATE

Catharina Haynes

Catharina Haynes
United States Circuit Judge
For the Judicial Council of the Fifth Circuit