

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

APR 14 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Docket Number: 05-16-90060

MEMORANDUM

Complainant, a civil litigant, complains that the subject United States Magistrate Judge showed “extreme favoritism” towards counsel for the defendant during a show cause hearing on a motion for sanctions against complainant and her attorney. For example, complainant submits that when she entered the court room, she saw defense counsel “laughing and bantering with the [magistrate] judge, asking about family and so on. It was clear they knew each other personally; were possibly buddies.” She further implies that defense counsel somehow engineered the assignment of the motion to the magistrate judge to obtain “friendly favoritism” for the defendant.

Nothing in the pre-trial banter complainant describes is sufficient to support a finding of judicial misconduct, nor does she provide any evidence in support of her contention that defense counsel engineered assignment of the motion to the magistrate judge. The allegations are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

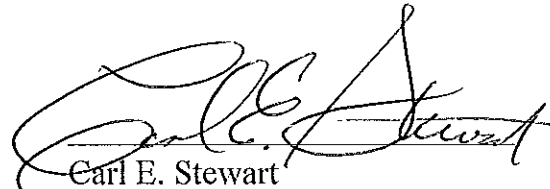
Complainant claims that she did not expect to be questioned at the hearing, and protests that the magistrate judge permitted defense counsel to question her “extensively”, “smiled at” defense counsel, but “ignored me and my testimony ... glared at me throughout the process, and even said I was being dishonest then and in my deposition.”

To the extent that allegations relate directly to the merits of the magistrate judge’s conduct of the hearing, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations that the magistrate judge’s bias was evident in his

“glaring” at complainant and in his finding that she was dishonest during the hearing and the deposition, are also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). 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 the defendant ... 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).

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

March 16, 2016