

FILED

March 15, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90063

MEMORANDUM

Complainant, a state court litigant, alleges that the subject United States Magistrate Judge, her former attorney, practiced law after his appointment to the bench by providing legal advice to her successor counsel, and that he continues to practice law by participating in fee-dispute litigation between her and successor counsel. After considering the complaint and the judge's response, I find that the complaint should be dismissed in part as incapable of being established through further investigation, and in part as alleging conduct that is not prejudicial to the business of the courts.

The subject judge represented complainant in a state-court civil matter before his appointment to the bench. When the judge took the bench, he referred complainant's case to a law firm ("the firm"). Complainant, represented by the firm, settled the civil case, but is now engaged in a dispute with the firm over the computation of its contingent fee. Complainant discharged the firm, which has intervened in the civil case, and which has named the judge as a necessary party.

Complainant asserts: (1) that her successor attorney at the firm, "Attorney A", told her that the judge, after taking the bench, "was actively involved in the estate case . . . and was integral in the preparation of the case for trial"; and, (2) that "[Attorney A] indicated . . . [the judge] confirmed that the fee was owed" and complainant has "no doubt" that the judge is "working in conjunction with [the firm] to secure a fee they are not entitled to."

Pursuant to Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, I asked the judge to respond to the complaint, and he did so. The judge acknowledges that he has an interest in the contingent fee that is derivative of the firm's fee. He denies that he performed any legal work on the case after his appointment to the bench, either regarding the underlying case or the fee dispute. He further attaches affidavits from successor counsel, Attorney A and Attorney B. Attorney A—complainant's only source of alleged evidence other than her own beliefs—also denies that the judge participated in the case or the fee litigation or provided any legal services after the judge's withdrawal as counsel of record, as does Attorney B.

Under these circumstances, this allegation is incapable of being established through further investigation and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(iii) and Rule 11(c)(1)(E).

With respect to the judge's derivative fee interest, a judge may seek disputed fees through settlement or adjudication, provided the fees received reasonably reflect the services rendered by the judge. *See Connor and Mekilo, Ethics Deskbook for United States Judges (2020), Section 2, page 12.* Complainant does not appear to be arguing that the judge is not entitled to any fee, but rather that the firm, and derivatively the judge, are seeking an excessive fee. But as long as it cannot be shown that the judge is providing legal advice or services in the fee dispute, this allegation does not assert conduct that is “prejudicial to the effective and expeditious administration of the business of the courts,” 28 U.S.C. § 351(a) and Rule 11(c)(1)(A), and is therefore also subject to dismissal.

An order dismissing the complaint is entered simultaneously herewith.

/s/ Priscilla Richman

Priscilla Richman

Chief United States Circuit Judge

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