United States Court of Appeals
Fifth Circuit
**FILED**
March 15, 2023
Lyle W. Cayce
Clerk

# Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90125

## M E M O R A N D U M

Complainant, an attorney, alleges that the subject United States District Judge: subjected her to "disparate treatment" and displayed racial and gender bias and personal animus towards her; influenced other federal judges to treat her and, by association, her clients, "harder and harsher than others"; and improperly communicated his bias and personal animus to a state judge and to an attorney conducting a forum for candidates running for state judicial office. She submits that the chief judge has deliberately subjected her to "irreparable harm" and is attempting to "utterly dismantl[e] . . . the judicial system in [the State]."

*I. Misconduct in district court proceedings*

*— Case 1*

Complainant represented the Plaintiffs in this case. In August 2020, the judge entered an order denying a motion and a "rebuttal" filed by the Plaintiffs. The order included a footnote explaining that instead of inserting a "sic" after each of the numerous grammatical and typographical errors in the Plaintiff's filings, the court would insert a "sic" after each quote containing such errors.

Complainant alleges that the judge's remark amounted to "foul misconduct behavior" and a "personal attack" subjecting her to "[t]he insult of being called an uneducated black woman." She posits that the judge

"might be motivated by shear [sic] power of the robe and began when [I] challenged and filed a motion for rehearing on behalf of clients." Complainant also reports that she "was forced to advise the plaintiff[s] to accept" the settlement agreement because they "believed that [the judge] … was being unexplainably bias[ed] and could have caused plaintiff[s] to sue her [sic] lawyer because the district court was clearly not interested in facts rather, insults."

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 assertions of racial and gender bias and personal animus appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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."

— *Case 2*

Complainant represented the Plaintiffs in this case. In a 20-page order entered in September 2021, the judge instructed the Plaintiffs to file a *Schultea* Reply[1] to the Individual Defendants' qualified-immunity defense, and delineated the factual detail and particularity required in the reply. The Plaintiffs filed an 87-page *Schultea* Reply, and the Individual Defendants filed renewed motions to dismiss.

Complainant protests that the judge "orders [me] to file a *Schultea* Reply for their lawsuit filed [sic] when their lawsuit had attached to it exhibits or evidence to take the matter as true as filed [sic]." Asserting that she is "being treated differently from other citizens/litigants before [the judge]" who is "deliberately trying to send a message to [my clients] that something is wrong with their lawyer," complainant contrasts this ruling with "five

[1] In *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995).

other lawsuit[s] against the [same or similar defendants]" in which Plaintiffs' counsel "did not attach evidence," but the judge "DID NOT ORDER any *Schultea* Reply."

Contrary to complainant's claims, the plaintiffs in one case were ordered to file a *Schultea* Reply, and another case appears to be irrelevant because it was transferred to a different judge before the Individual Defendants moved for summary judgment on qualified immunity grounds. As to the other three cases, complainant offers no evidence or compelling argument that the judge's decisions that those Plaintiffs had adequately addressed the Individual Defendants' qualified immunity claims were either erroneous or gave preferential treatment to Plaintiffs' counsel.

To the extent that these allegations relate directly to the merits of the judge's decision that complainant's clients failed to sufficiently address the Individual Defendants' qualified immunity claims, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions that the judge's 20-page decision was motivated solely by personal animus towards complainant, and that he demonstrated prejudice and bias by treating complainant differently from attorneys representing plaintiffs in cases against the same or similar defendants, 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."

Complainant complains further that after requiring her to file "unnecessary pleadings like the ordered *Schultea* Reply,"[2] the judge "refused to even respond back in an order concerning the unnecessary filings" and "sits on the records with the motive to frustrate the process of the business of the court" and to "deliberate[ly] inflict[] irreparable harm" on complainant.

[2] Complainant does not specify any other "unnecessary" filings.

A review of the docket indicates that the judge did "respond back" to the *Schultea* Reply, entering an order noting that despite the Plaintiffs filing an Amended Complaint instead of a *Schultea* Reply (and doing so without the court's permission and the consent of the other parties), the court would construe the filing as a *Schultea* Reply. This aspect of the complaint is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

As to the allegation that the judge "is sitting on the records with the motive to frustrate the process of the business of the court" and "inflict irreparable harm" on complainant, such a conclusory assertion is insufficient to support a finding of judicial misconduct and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

— *Case 3*

Complainant and her husband were Appellants in this appeal from a bankruptcy court ruling, and complainant is also listed as Appellants' counsel. Complainant notes that in an order entered in March 2022, the judge stated that "[b]ased on limited research," the district court had concerns about its subject-matter jurisdiction because [the bankruptcy judge's] ruling at issue on appeal appeared to be interlocutory rather than final. Complainant objects that "courts are expected to render opinions in law based on research, not limited research, showing [a] deliberate attempt to harm [me]."

Complainant further notes that in an order entered in April 2022 dismissing the appeal for lack of jurisdiction, the judge stated that the Appellees had noted that the bankruptcy court's order "was not final for the purposes of 28 USC § 158(a)(1)."[3] Complainant protests that "it was not the Appellees whom [sic] raised any issue of the bankruptcy court's order being final, it was [the judge]."

[3] *Id.,* Order entered April 4, 2022 (Doc. 22), at 3.

Contrary to this claim, a review of the record shows that in replying to the Appellants' response to the court's order to show cause why the case should not be dismissed for lack of jurisdiction, the Appellees explicitly argued that the bankruptcy court's order was not final for the purposes of 28 U.S.C. § 158(a)(1). It appears then that complainant is alleging that the judge improperly raised the issue of the interlocutory nature of the bankruptcy court's order sua sponte in the March 2022 order, and intentionally and prejudicially attributed that argument to the Appellees in the April 2022 order.

Complainant also notes that the judge "literally dismissed the case within 2 day [sic] of Plaintiffs' reply to [his] sua sponte order to show cause." Without presenting any evidence in support of the claim, complainant submits that "[i]t cannot be found any where [sic] in the history of [the judge] adjudicating, (at least from my research) that he renders a final decision by the next day of a litigants [sic] response." She submits that "there was no thinking about the law" in the judge's "rush to harm [me]" by demonstrating "his power to deliberate [sic] strike down plaintiffs' [sic] in their lawfully filed with facts [sic] to prove motion to dismiss only because it was [me] whom [sic] filed it on behalf of [myself and my] husband."

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 assertions of bias, prejudice, and personal animus appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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."

— *Case 4*

This is a case in which complainant and her husband are Plaintiffs, and complainant is listed as Plaintiffs' counsel. In February 2022, United States

Magistrate Judge A denied the Plaintiffs' motion to compel a non-party to produce certain records and, in April 2022, the magistrate judge denied their motion for reconsideration. The Plaintiffs filed a Motion for Review of the denial of reconsideration. In August 2022, the judge entered an order dismissing the case.

Complainant alleges that the judge "seems to have told [Magistrate Judge A] to … deny Plaintiff's [sic] motion to compel entitled discovery" and did so because it was filed by "a woman of color/this lawyer." In support of this claim of race and gender bias, complainant submits that, in another case, the judge exerted "his control" over United States Magistrate Judge B to ensure that the Defendants' motion to compel discovery was granted (in part), i.e., complainant appears to imply that the judge "influenced" the magistrate judge to grant the motion because it was filed by a white attorney.[4]

Complainant offers no other evidence in support of her wholly speculative accusation that the judge influenced the two magistrate judges to deny or grant motions based on the race of counsel filing the motions and/or his personal animus towards complainant, and the allegation 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."

Complainant further complains that the judge "is currently just sitting on that simple appeal for a motion to compel." At the time complainant filed the instant complaint, the Motion for Review had been pending for two months and the case was dismissed four months after the motion was filed.

There is no evidence to suggest that the four-month delay in judicial action was due to either lack of diligence or personal animus against complainant, and the allegation is therefore subject to dismissal under 28

[4] Complainant misattributes the motion to the Plaintiff. A review of the docket shows that the motion was filed on behalf of the Defendants by a female attorney.

U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

— *Case 5*

Complainant, who is counsel for the Plaintiffs in this pending case, alleges that the judge "instructed or influence[d]" the presiding United States District Judge to "stop and delay" ruling on the Plaintiffs' Motion to Dismiss the Defendant's Notice of Appeal for lack of jurisdiction and failure to file a supersedeas bond.

Complainant signed the instant complaint on June 20, 2022, at which time it appears that the Plaintiffs' motion to dismiss the appeal had been ripe for consideration since for almost ten weeks. The presiding judge denied the motion on June 22, 2022. Complainant's conclusory assertion that the judge directed the presiding judge to delay ruling on the motion is 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."

*II. Other misconduct*

Complainant alleges that the judge's "campaign[] to assault" her has "spewed over into other lawyers saying they have spoken with [the judge], and even a former [state judge's] vicious attacks against [me]." In support of this claim, complainant provided copies of correspondence written by the then-state judge to the State Bar seeking an investigation into complainant's allegedly unprofessional and/or illegal conduct, and email correspondence between complainant and an attorney who invited her to participate in a forum for candidates running for state judicial office.

Complainant claims that, based on statements in the state judge's and the attorney's correspondence, it "appears" that the judge engaged in improper ex parte communication with them about her conduct in Case 1, with the intention of "start[ing] rumors about [me]" and to "utterly dismantl[e] the [State] judicial system."

However, neither the state judge nor the attorney said that the judge communicated with them. Because complainant has not provided the kind of objectively verifiable proof required to raise an inference that misconduct has occurred, these allegations are 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.

Extensive record review was required to evaluate complainant's copious conclusory allegations. As an attorney, complainant should know "the standards for stating a viable claim of judicial misconduct" and should also be "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). Complainant's complaint falls well short of these standards.

An order dismissing the complaint is entered simultaneously herewith.

/s/ *Priscilla Richman*
Priscilla Richman
Chief United States Circuit Judge

March 15, 2023