

FILED

April 5, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90013

MEMORANDUM

Complainant, a pro se bankruptcy litigant, has filed a complaint alleging misconduct by the subject United States Bankruptcy Judge in an adversary proceeding.

Complainant complains that despite “alert[ing] the bankruptcy court (via pleadings) of my false accuser’s [i.e., the Plaintiff’s] history of violence, ulterior motives and threats to exact revenge,” the judge granted the Plaintiff’s motions to strike and/or seal three motions to dismiss filed (and later withdrawn) by complainant, denied and sealed complainant’s fourth amended motion to dismiss, and granted the Plaintiff’s motion for a temporary restraining order. He submits that the judge’s rulings “wrongfully punished [me] for speaking and submitting straight FACTS, backed up with evidence.”

Complainant further protests that during a June 2022 hearing the judge on the motions, the judge “threatened” him three times and falsely accused him “of harassing my false-accuser.” In support of this claim, complainant recounts that the judge:

— “[T]hreatened to punish me with a perjury charge for denying that I harassed [the Plaintiff].”

- “[B]lamed [me] for creating a mess of the docket (even though I voluntarily withdrew the extraneous motions) and ... threatened me by saying that she would have me labeled as a “vexatious litigant”.”
- “Said, with a large, hulking “Black guy” in the judge’s area[,] with her staring me down, “I know people to get it done.” I didn’t know exactly whether [the judge] was insinuating that the guy next to her would be coming for me, or if she would be “putting a hit out on me” from the streets or within the courts to carry out these threats.”

He further contends that the judge’s verbal “threats” caused him to be “seriously concerned . . . about my personal safety, my First Amendment rights to speak (about my false-accuser’s/Plaintiff’s motives) and being abused and subjected to intimidation tactics in these proceedings as a pro se, African-American and male Debtor/Defendant against a vengeful, female ex-wife Adversary Complaint Plaintiff.”

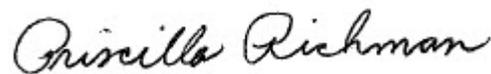
A review of the audio-recording of the hearing shows that, based on the evidence presented, the judge found that complainant’s motions included information and exhibits that were irrelevant to the adversary proceeding and should be stricken and sealed because their inclusion on the public docket posed an immediate and irreparable threat of harm to the Plaintiff’s reputation, privacy, and psychological well-being. The judge concluded that complainant’s conduct in filing those materials constituted harassment of the Plaintiff, and the judge expressed concern that complainant might have committed perjury during his testimony. The judge admonished complainant that if he filed further harassing statements or exhibits, he would be subject to sanctions (e.g., being designated as a vexatious litigant, and/or monetary sanctions, and/or being found in contempt of court). Contrary to complainant’s account, the audio-recording demonstrates that the admonishments about the range of sanctions at the judge’s disposal were made calmly and respectfully, and the judge did not say, “I know people to get it done” (or anything similar).

Complainant also asserts that throughout the adversary proceeding, the judge was “blatantly dismissive and gaslighting in her approach to my filings, further compounding the present bias and suppression of facts, law, and constitutional precedence,” and “wrongfully burdened me with a censorship-based, 1st Amendment violating Permanent Injunction, while continuously accusing me of “harassment” of my false accuser.” In addition, he protests that the judge “summarily rejected” his “objections to the unconstitutional and unlawful Permanent Injunction.”

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 threatening conduct during the June 2022 hearing, or bias against “a pro se, African-American and male Debtor/Defendant” throughout the adversary proceeding, 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.”

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.



Priscilla Richman

Chief United States Circuit Judge

April 5, 2023