

FILED

January 3, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90083

MEMORANDUM

Complainant, a state court litigant, previously filed a complaint alleging 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 continued to practice law by participating in fee-dispute litigation between her and successor counsel. The complaint was 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, under 28 U.S.C. § 352(b)(1)(iii).

Complainant has now filed a second complaint alleging that the judge’s conduct in representing himself in the fee litigation was harassing and abusive, and constituted retaliation against her for filing the first complaint.

Meeting with complainant’s attorney

Complainant alleges that the judge improperly attempted to intimidate her new counsel (“Mr. M”) by personally visiting Mr. M and demanding that he withdraw a discovery request—which Mr. M agreed was improper during proceedings held later in the state court proceeding—that he had served on the judge.

Complainant has provided no evidence that the judge’s meeting with Mr. M was harassing or abusive, or that it involved any invocation of the judge’s judicial role or prestige. There is insufficient evidence to raise an inference that

misconduct has occurred, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

February 2023 hearing

Complainant contends that the judge's insistence on a hearing and request for sanctions against her and her husband "was clearly solely intended to harass me and [my husband] in retaliation for my prior report of suspected misconduct by [the judge]." She argues that this is evidenced by: (1) the alleged impropriety of the judge, as a pro se litigant, claiming attorneys' fees as a sanction; (2) the judge's rejection of Mr. M's pre-hearing offer to personally pay the judge's fees (because the judge wanted sanctions imposed against complainant as well); and (3) the judge's "introducing the [first misconduct] complaint into evidence at the hearing, which had absolutely no relevance to the issue of sanctions."

The hearing transcript demonstrates that the judge was attempting to persuade the state judge that complainant and her husband had sought to have Mr. M include in the subpoena requests documents that were not relevant to the fee dispute, but rather were a search for evidence to support allegations in complainant's first misconduct complaint. The judge introduced an email from complainant's husband to Mr. M, asking to include those items in the subpoena.

Canon 4(A)(5) of the Code of Conduct for United States Judges specifically authorizes judges to "act pro se," and there is no impropriety in the judge's vigorous self-representation in opposition to what he believed, and the state judge agreed in an order entered after the hearing, was an improper and harassing subpoena. These allegations are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) because there is insufficient evidence to raise an inference that misconduct has occurred.

Complainant further asserts that the judge made intentional misrepresentations during the hearing. A review of the relevant portions of the transcript does not reflect any misrepresentation by the judge. One of complainant's proffered examples merely reflects a semantic difference

between the words “directed” and “requested”, and the second example refers to a question by the judge, not a representation.

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

Complainant also claims that by aggressively questioning her and her husband during the hearing, the judge was retaliating against complainant for her filing of the first misconduct complaint. She argues that the judge was “very rude, aggressive, and confrontational” in questioning her and her husband about the first complaint, in particular in implying that they had filed the first complaint to gain leverage in the attorneys’ fee dispute, and that her husband was engaged in the unauthorized practice of law in a state where he was not licensed.

The portions of the transcript in question do not indicate any such harassment or retaliation. In the light of the congruence between the subpoena requests to the judge suggested by complainant’s husband, and the facts alleged in the first complaint, it was entirely legitimate and unsurprising for the judge to have pressed complainant on her motives for filing the complaint, and probed her husband’s level of involvement in that filing.

There is insufficient evidence to raise an inference that misconduct has occurred, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant asserts that the judge attempted to obstruct her misconduct complaints about the above matters by objecting to the unsealing of the hearing transcript. However, the record indicates that the state court judge sealed the transcript *sua sponte*, and that the subject judge did not file any court paper in opposition to the motion to unseal; he merely declined to consent to the motion (as well as to other motions that complainant was proposing).

Rule 4(a)(5), Rules for Judicial-Conduct and Judicial-Disability Proceedings, defines interference with the complaint process as “refusing, without good cause shown, to cooperate *in the investigation of a complaint.*”

(Emphasis added). There does not appear to be a rule or case that requires a judge who is the prospective subject of a complaint to cooperate in a complainant's marshalling of evidence to support a complaint. This allegation lacks sufficient evidence to raise an inference of misconduct and is subject to dismissal under 28 U.S.C. § 352(b)(1)(iii).

An order dismissing the complaint is entered simultaneously herewith.



Priscilla Richman

Chief United States Circuit Judge

December 26, 2023

FILED

February 28, 2024

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-23-90083

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.

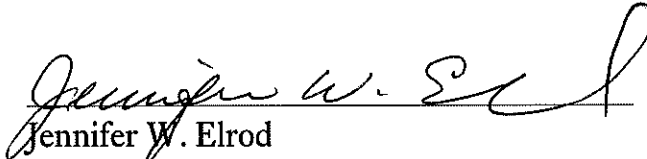
ORDER

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 Chief Judge Priscilla Richman, filed January 3, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

02-23-2024

Date


Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit