

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90105

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States Magistrate Judge.

Complainant recounts that at the conclusion of a hearing held in December 2022, “I wished the judge Merry Christmas as I was leaving the courtroom.” She alleges that the judge’s “reaction was pointed. It was a glaring snarl. This was not only unprofessional but immature. It was intimidating and showed extreme bias.”

A review of the audio-recording of the hearing indicates that the judge treated complainant with patience and respect throughout the hearing and, in response to her parting salutation, said “Thank you” in a calm and respectful tone of voice. There is insufficient evidence to raise an inference that misconduct has occurred, and the allegation that the judge’s response was “unprofessional,” “immature,” “intimidating,” and “bias[ed]” is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant appears to further allege that the judge should have recused herself sua sponte “based on her prior involvement as a trial attorney representing the same mortgage companies” or should have granted complainant’s Motion for Recusal because the judge “has shown great bias

during these proceedings by refusing to acknowledge my legal standing against the Defendant.”¹

These allegations relate directly to the merits of any implicit or explicit decision not to recuse and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also expresses “concern” that on March 17, 2023, the day after she filed a Notice of Interlocutory Appeal, the judge “issued” a “bias[ed] and intimidat[ing]” order containing “similar wording” to an email complainant received from defense counsel on the same day. A review of the record shows that the judge’s order stated that the district court retained jurisdiction to rule on motions because an “order denying recusal is a non-appealable interlocutory order,”² and therefore complainant was still required to comply with discovery obligations, to sit for a scheduled deposition on May 24, 2023, and to appear in person at a motions hearing scheduled for March 28. Complainant has provided a copy of defense counsel’s email which stated that “the denial of a recusal motion is not an appealable interlocutory order or an appealable collateral order,”³ and counsel expected the court to proceed with the scheduled March 28 motions hearing.

Complainant does not explain the basis of her concern, but she appears to infer that because the order and the email were “issued” and mailed, respectively, on March 17, 2023, there might have been improper ex parte communication between the judge and defense counsel. However, the docket records that the judge signed the order on March 16, 2023, and it was then entered on the docket on March 17.

Regardless, to the extent that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, there is insufficient evidence to

¹ It appears from a review of the record that complainant did not raise either of the issues in her Motion to Recuse, and she first raised the issue of a (purported) conflict of interest in a Motion to Stay filed several weeks later.

² Citing *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 86 n.3 (5th Cir. 1992).

³ Citing *Willis v. Kroger*, 263 F.3d 163, 163 (5th Cir. 2001).

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

Complainant recounts that defense counsel conducted “an interrogation” —i.e., a deposition—in the courtroom immediately following the March 28 motions hearing.⁴ She complains that despite “view[ing] the entire proceedings,” the judge not only failed to intervene to stop defense counsel’s “continued bullying, harassment and intimidation,” but also “chastised me for crying in her courtroom.” Complainant provides no further information in support of the latter claim in the instant complaint but, in a prior complaint which complainant withdrew before it was filed, she stated that “in the judge’s final remarks, she stood by the actions of the opposing attorney . . . [and] verified that she clearly disapproved of my crying in the courtroom and my interruptions of the attorney.”

A review of the 144-page transcript of the almost 3.5-hour deposition shows that complainant was a highly combative deponent. She gave largely non-responsive answers, resulting in defense counsel’s rephrasing questions, often multiple times, in attempts to elicit responsive answers. It is also evident that defense counsel’s “repetitious” questions caused complainant to become increasingly agitated and she repeatedly accused defense counsel of intentionally harassing, bullying, and intimidating her. At other points, complainant appeared to become upset, but she emphatically declined defense counsel’s offers to take a break.

The transcript records that towards the end of the proceeding, complainant said that she did not want to answer any further questions and, if defense counsel wanted to, he could call the judge to join the proceeding. The next recorded statement is the judge’s saying that she had been observing the proceeding for a couple of hours. Complainant then expressed distress at defense counsel’s repetitious questioning, and the judge called a recess. The deposition resumed approximately nine minutes later. While defense counsel was making an oral motion to compel complainant to produce certain

⁴ At the conclusion of the motions hearing, the judge offered the courtroom for the deposition after complainant declined to be deposed at defense counsel’s office.

documents within ten days, she interrupted several times, accusing him of “enjoying this and finding it amusing.” In response to defense counsel’s denial of the accusation, complainant responded: “That grin on your face and your constant glares at the judge really tell a different story.”

After granting defense counsel’s oral motion, the judge made the comments complainant alleges constitute evidence of bias against her, i.e., the judge noted for the record that, contrary to aspersions made by complainant earlier in the proceeding, she had not observed any eye-rolling, smirking, or smiling, and defense counsel had comported himself with professionalism, whereas complainant had raised her voice, cast aspersions, made improper accusations, and had, at points, cried.

To the extent that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, 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, who has been shown to be a thoroughly reprehensible person. 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, 550-551 (1994). The allegation that the judge’s negative opinion of complainant’s conduct during the deposition constitutes evidence of bias is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, complainant claims that “there are many instances when [the judge] has shown bias and alignment with [the Defendant].” For example, the judge:


- took no action on complainant’s claims that her former attorney “refus[ed] to provide me documents filed by the courts leaving me to miss judgments and requests” which “has left me as pro se” and indicates the attorney’s “probable alignment with [the Defendant],”
- “continued to intimidate” complainant by erroneously and prejudicially construing her Certificate of Interested

- Persons/Disclosure Statement—filed seventy-four days after the disclosure deadline—as a Motion to Conduct Out of Time Discovery, and by denying the motion without addressing complainant’s claims that defense counsel has “refused to return [original] documentation that verified my claims . . . are valid,”
- failed to address the merits of complainant’s claims that the Defendant has provided no documentation to establish its “jurisdiction over this loan as set forth by the Federal Consumer Protection Bureau,” and
 - failed to address her claims that the Defendant had “intimidate[d], harass[ed] and bull[ied] [her] in the hopes of reaching a settlement.”

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 prejudice, bias, and intimidation 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

December 29, 2023

FILED

January 31, 2024

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Number: 05-23-90105

Petition for Review by [REDACTED]
Regarding Complaint of Misconduct and/or Disability Against
[REDACTED]
Northern District of Texas,
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 9, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] Northern District of Texas, under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

January 30, 2024
Date


Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit