

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90122

MEMORANDUM

Complainant, a pro se litigant, has filed a convoluted complaint alleging misconduct by the subject United States District Judge in complainant's pending civil rights action.

— *Complainant's "requests" docketed/construed as "motions."*

Noting that she has only filed "REQUESTS and NOTICES" in the underlying case, complainant objects that "anything I have filed in [this case] gets fraudulently placed on the docket as a "motion" despite what the clear evidence shows."

It appears that complainant does not understand that parties in the district court file "motions," not "requests." Regardless, to the extent, if any, that this allegation might be construed as a complaint that the judge improperly permitted court personnel to docket the requests as motions and/or he construed the requests as motions, it is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

— *Failure to promptly rule on pending requests*

Complainant alleges that the judge: "knowingly and intentionally obstructed justice" by failing to promptly grant her request for renewed service on [a defendant-attorney], thereby "allowing [the defendant] to escape justice"; violated her due process rights by not considering her requests for permission to file electronically, for renewed service of process on that defendant, and to correct filing errors at the pre-motion conference

in late March 2023; and, delayed ruling on her February 2023 request to correct a purported error by the clerk’s office in listing the defendants.

A review of the record indicates that although complainant’s requests were scheduled for consideration during the pre-motion conference, the judge explained that he would not rule on any pending requests because he had granted complainant’s oral request to stay the case so she could obtain counsel.¹

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 obstruction of justice, bias in favor of the defendants, and intentional delay 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.”

— *Failure to correct errors in docketing*

Complainant asserts that non-judicial court personnel intentionally “tampered with” her 318-page Judicial Notice by scanning it incorrectly to make it “look tacky and unprofessional,” i.e., 37 pages—including a crucial exhibit—were missing, “a majority of the pages were upside down,” some pages “were out of order,” and other pages “were duplicates.” Complainant claims that she brought these errors and misconduct to the judge’s attention in a Notice of Error filed in late March 2023, and she contends that “it is very clear and evident” from his failure to ensure that the errors were corrected that “this bias [sic] and corrupt judge has allowed this to happen in [sic] effort to . . . obstruct justice and protect the defendants at all cost[s].”

¹ The docket records that at a status conference in August 2023 (i.e., after the instant complaint was filed), the judge denied a further stay and ruled on complainant’s requests.

Judges are not responsible for scanning and docketing parties' filings. Regardless, such conclusory assertions of bias, corruption, and obstruction of justice are insufficient to raise an inference that misconduct has occurred and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant reports that some documents she filed are accessible to "case participants only" and that her "supporters" have told her that they are unable "to follow" her case without paying a PACER "membership fee." She appears to allege that the judge "has gone above and beyond to protect the criminal Defendants" by ensuring that filings are not accessible to the public.

The judge did not docket the documents and he is not responsible for PACER's fee policy, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

— *Misconduct during pre-motion conference*

Complainant's allegations regarding the pre-motion conference are neither clear nor concise. She appears to complain that:

- The judge stated that he would deny her motions for default judgment against the defendants for failure to answer her second amended complaint because the complaint was filed without permission, and he said that some defendants "already responded to my second amended complaint which is also a flat lie!"
- When complainant attempted to address the court about the "factual and well-proven evidence" contained in her Judicial Notice, i.e., evidence of the defendants' "criminal activities, extortion, fraud, obstruction of justice, [and] public corruption" and "pending investigations with [a state judicial commission, a state bar, and a state insurance commission] as well as the FBI (possibly)," the judge "talk[ed] over" her "to avoid hearing the truth."

— “When I asked the Judge about my pending issues that were placed on the docket text to be discussed he intentionally ignored me TWICE then ended the conference.”

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).

A review of the audio-recording of the pre-motion conference shows that the judge explained several times, clearly and concisely, that the merits of complainant’s claims could not be addressed during a pre-motion hearing and that the court could not intervene in the state court proceeding based on her filings to date. Despite these explanations, complainant persisted in arguing the merits of her claims, insisted that the court could intervene in the state court proceeding, and accused the judge of refusing to act on her claims because he was biased in favor of the defendants.

The judge was unfailingly patient and respectful towards complainant. His polite efforts to regain control of the proceeding by interrupting her inappropriate attempts to raise the merits of her claims appear to have been warranted, and any conclusory assertion of improper motive 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.”

— *Single word missing from audio-recording of pre-motion conference*

Complainant reports that she has listened to “around 30 minutes” of the 73-minute audio-recording of the pre-motion conference, and she claims that it is apparent that the recording has “been tampered with and redacted” because “[t]he word “NOTICE” when I mentioned the JUDICIAL NOTICE has been removed from the audio-recording.”

The minor discrepancy between complainant’s recollection of what she said, and the purported “redaction” of a single word, does not constitute evidence of “record tampering,” let alone that the judge was responsible for any such anomaly, 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.”

— *Failure to issue statements of reasons*

Complainant complains that the judge denied her motion to transfer her case to another judge without issuing “a statement of reasons.”

The allegation relates directly to the merits of a decision or procedural ruling and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant claims that during the pre-motion conference, the judge denied her motions for default judgment against the defendants for failing to answer her second amended complaint and granted her leave to file a third amended complaint. She complains that because the judge did not issue a statement of reasons for denying her motions for default judgment, she will not be able to “properly defend” herself if she files a third amended complaint. Contrary to this claim, a review of the audio-recording of the pre-motion conference indicates that the judge did not rule on complainant’s requests for default judgment and, indeed, he advised the parties that the court would not consider any pending motions/requests while the case was stayed.

The allegation is frivolous and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

— *Improper motives in setting hearings*

Complainant alleges that after she sent an email “informing” the judge about “the pending FBI investigation for public corruption, fraud, criminal activities, white collar crime, etc.,” the judge violated his own Docket Control Order and Court Procedures, the local court rules, and the Federal Rules of Civil Procedure by “chang[ing] his scheduling order within just a few hours . . . to allow the Defendants to dismiss my complaint prior to what should have taken place.” In support of this claim, complainant points to a notice docketed by the judge’s case manager setting the pre-motion

conference which, complainant asserts, was improper and prejudicial because it amounted to “cancelling” a previously scheduled Initial Conference before a United States Magistrate.²

Complainant further alleges that “within a few hours” of her emailing a copy of the instant misconduct complaint to the judge’s case manager on May 31, 2023, the judge “had his case manager to [sic] finally schedule a pre-motion [sic] conference.”³

Such conclusory assertions of improper motive in setting court hearings 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.”

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

² There are no docket entries or orders “cancelling” the Initial Conference, but it appears that it was not held because it was scheduled for a date that fell within the 30-day stay granted by the court during the pre-motion conference.

³ A review of the docket indicates that complainant is referring to a June 1 docket entry resetting a status conference.