

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90123

MEMORANDUM

Complainant, a pro se litigant, has filed a convoluted complaint alleging misconduct by the subject United States District Judge in two cases.

Case 1

Complainant complains that despite his advising the court that the “defendant evict[ed] and sue[d] all witness[es] mentioned in [Case 1] and in the state court,” and despite his filing “one document showing [a] witness was being coer[c]ed to provide information [Case 1] at the state court,” the judge “allow[ed] the d[e]fendant and attorneys to sue and depose [that] witness at the state court regarding matters in [Case 1] without any permission to do so before fil[ing] an answer and responsive motion.” He appears to further contend that the judge’s decision “letting all the defense lawyers violate my constitutional rights” was in retaliation for complainant’s “refusal to take on [court-appointed counsel] . . . in [Case 2].”

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 assertion of retaliation appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and 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.”

Case 2

— *Erroneous and/or prejudicial decisions*

Complainant recounts that during a status conference in December 2020, the judge asked defense counsel “if he has filed [sic] summary judgment” and, when defense counsel “responded that they did not file any summary judgment, [the judge] asked if [defense counsel] is planning to so he can go ahead.” Complainant appears to allege that the judge improperly encouraged defense counsel to move for summary judgment.

A review of the transcript of the status conference contradicts this allegation, and it is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant complains that the judge erroneously “dismiss[ed] the claims for defamation for fail[ure] to state [a] claim.” He further alleges that the judge erroneously held that he had failed to file a response to the court’s order to show cause why a defendant should not be dismissed for failure to effect proper service. Complainant also complains that when he attempted to bring the error to the court’s attention during the December 2020 status conference, the judge did not vacate the erroneous decision.

Complainant recounts that during the December 2020 status conference, when the judge ordered the parties to confer regarding mediation, there was “no discussion” about the court sua sponte appointing counsel to represent complainant in mediation and complainant did not ask the court to appoint counsel. He alleges that the judge’s post-hearing decision appointing counsel and enjoining him “from filing anything with the district court clerk without [the attorney’s signature]” violated his “fundamental right to present a case with a lawyer or without a lawyer. Complainant further asserts that the decision constituted demonstrably egregious and hostile treatment, i.e., “like I’m a minor or [the judge] found evidence of me with mental illness.” He also alleges that in retaliation for his “refusal to take on [court-appointed counsel],” the judge let defense counsel

“abus[e] the discovery process to obtain student medical status material” and accepted defense counsel’s “bad faith presenting [sic] saying I was not co[o]perating with discovery.”

In addition, complainant complains that in ordering the parties—both of whom had missed deadlines for filing responses to dispositive motions—to file responses within three days, the judge failed to specify whether complainant was required to respond to the defendant’s motion for summary judgment, amended motion for summary judgment, or second amended motion for summary judgment. He appears to further complain that the (extended) deadline for filing the response was insufficient.

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, hostility, and retaliation 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.”

— *Conflicts of interest*

Complainant claims that the judge’s answers to a Questionnaire for Judicial Nominees contain evidence of two conflicts of interest that required the judge to recuse sua sponte or in response to complainant’s recusal motion.

- (1) Complainant contends that the judge is a member of a church which “owns” the defendant-school, and this (purported) conflict of interest resulted in the judge’s being “influenced . . . to overtake [sic] the responsibility of defending the school and making sure that the Jury does not hear what happened at the hospital they deferred [sic] about patient complaint.”
- (2) The judge reported that he had been employed at law firms whose offices were located on the sixth floor of the same office building

where defense counsel is employed in a law firm located on the ninth floor. In his motion to recuse, complainant explicitly alleged—and here he appears to imply—that the proximity of these law offices constitutes evidence that the judge and defense counsel have a professional or personal relationship that constitutes a conflict of interest.

These allegations relate directly to the merits of the judge’s implicit and explicit decisions not to disqualify/recuse and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

— *Ex parte communication with defense counsel*

As summarized above, both parties failed to file responses to each other’s dispositive motions. Complainant recounts that a courtroom deputy called him to convey that “[the judge] want[s] to give you a chance” to file a response to the Defendant’s motion for summary judgment “before he rule[s] on the motion.” Without presenting any evidence in support of the assertion, complainant contends that this phone call constitutes evidence that: the judge and defense counsel engaged in ex parte communication regarding an “arrangement” the parties had reached “about amendments” to the motion for summary judgment (pertaining to complainant’s compliance with discovery);¹ and, because the judge “did not like the arrangement, . . . [he used] his power of office has [sic] to help [the defendant] be removing amendments . . . so he can claim I was [sic] untimely respond [sic] and he was doing me a favor.”

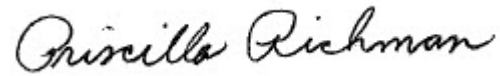
To the extent, if any, that these allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the conclusory assertions of improper ex parte communication and bias lack sufficient evidence to raise

¹ Contrary to the assertion of improper ex parte communication, complainant reports that in discussing this arrangement with defense counsel, “the lawyer herself said she will contact the judge.”

an inference that misconduct has occurred, and the allegations are therefore 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.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla Richman

Chief United States Circuit Judge

December 29, 2023

**Before the Judicial Council
of the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

April 9, 2024

Lyle W. Cayce
Clerk

Complaint Number: 05-23-90123

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 9, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

April 5, 2024
Date

Jennifer W. Elrod
Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit