

FILED

May 24, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90068

MEMORANDUM

Complainant, a criminal defendant, alleges that during a hearing in May 2023, the subject United States Magistrate Judge [hereafter “the judge”] treated him and his co-defendant in an “abusive, egregious, and hostile manner.” In support of this allegation, complainant recounts that the judge: “yelled and scolded us . . . which was uncalled for since we were calmly attempting to answer his question[s]”; “cut of[f] a defendant from speaking, just to scream at the defendants [sic] to “speak””; and was “mad at us [sic] . . . because I have a mental disorder, disability that I have been getting treatment for since 2017.”

A review of the underlying docket shows that the hearing was convened to address motions to withdraw filed by complainant’s and his co-defendant’s retained counsel. The hearing also addressed complainant’s and his co-defendant’s motions for court-appointed counsel and their oral motions to withdraw their guilty pleas. Ultimately, the judge denied the motions.

A review of the transcript and audio-recording of the ten-minute hearing shows that, at the beginning of the hearing, retained counsel explained to the Court that they had reached an impasse with their clients who insisted that counsel file frivolous motions to withdraw their guilty pleas. The judge asked complainant to explain why the court should grant his

motions for court-appointed counsel and to withdraw the guilty plea. After a few seconds of silence, and in a noticeably raised voice, the judge said: “Speak.” A review of the audio-recording indicates that this was the only instance of the judge noticeably raising his voice.

The record further shows that, as the hearing progressed, the judge interrupted both complainant and his co-defendant to question them intensively about their claims that defense counsel had lied and coerced them into pleading guilty, and that their mental and physical health issues prevented them from knowingly entering guilty pleas. Sounding annoyed, the judge noted that during an arraignment hearing, complainant and his co-defendant had explicitly confirmed that their pleas were voluntary and their mental and physical health issues had no impact on their knowingly entering their pleas. However, there is nothing in the record to support complainant’s claim that the judge was “mad at” him for “having a mental disorder, disability.”

The record demonstrates that the judge raised his voice momentarily, occasionally displayed impatience, and his tone, demeanor, and admonitory remarks conveyed great frustration, and even annoyance, with complainant’s and his co-defendant’s arguments, but there is insufficient evidence to support a finding that the judge treated them in an “abusive, egregious, and hostile manner.” In *Liteky v. United States*, 510 U.S. 540, 555-556 (1994), the Supreme Court held that judicial bias is not established by a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display.”¹ This aspect of the

¹ See also Judicial Conference Committee on Codes of Conduct, Advisory Opinion 66, June 2009 (“Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality. Strongly stated judicial views rooted in the record, . . . expressions of impatience, dissatisfaction, annoyance or even anger directed to an attorney or a party should not be confused with judicial bias.”).

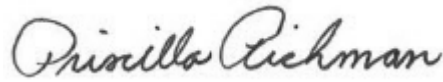
complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that by denying their motions to appoint counsel, the judge deprived complainant and his co-defendant of the “opportunity to consult with an honest defense counselor. We were forced to have liars.” He also appears to complain by granting defense counsel’s motion to seal the hearing record, the hindered their ability to “get counseling from new defense [sic].”

These allegations relate directly to the merits of decisions or procedural rulings and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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

May 22, 2024