

# United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. 86

Before MICHEL, Chief Judge.

## ORDER AND SUPPORTING MEMORANDUM

A complaint of judicial misconduct was received by the court on March 5, 2008. The complaint is directed to conduct of a judge who is a member of this court. The judge sat by designation as a member of a panel in another court of appeals. That panel, in an order, affirmed a district court's disposition of Complainant's case. Complainant states that he first submitted the complaint of judicial misconduct to the other court of appeals but the complaint was rejected because it involved a judge outside of the regional circuit.

A summary of each of the Complainant's assertions and the court's disposition with respect to each allegation in the complaint follows.

(1) Complainant states that "Evidences [sic] support Plaintiff's contentions that the Court's administration of this case has been given special considerations beyond the parameters of established Court Rules of the [regional circuit]." This statement does not allege misconduct by the judge. It is not supported by any evidence, such as evidence showing that the judge did anything in the case that would be considered misconduct. No specific act is cited as contrary to any circuit rule; nor is any specific rule cited as being violated. This assertion lacks requisite specificity and sufficient evidence to raise an inference that misconduct occurred, and that portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that Complainant might be challenging, without support, procedures applied to his case, that

portion of the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) because it is directly related to a procedural determination in Complainant's appeal.

(2) "[The judge] by virtue of him assuming the position as presiding Judge over this case, failed in his responsibility to uphold ABA Rules of reporting the misconduct of Court Officers. (*Whether [the judge] exceeded the boundaries of his authority, at the [regional circuit], is a question for this Court*)" [italics in original]. Elsewhere in his complaint, Complainant refers to the order issued by the three-judge panel in his appeal, contrasts statements in the order with his discussion of evidence, and then states that "[the judge] did not respond to these breaches in the law." Clearly, Complainant's assertions are directly related to the merits of the panel's determinations in his appeal, and this portion of the complaint is therefore dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that Complainant alleges that the judge "exceeded his authority," the Complainant does not further explain that allegation, provide any specific facts, or cite any evidence that would raise an inference that misconduct occurred. Thus, that portion of the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).

(3) "Issues of Judicial Misconduct contained in [two documents attached to the complaint] will reflect to this Court that aside from the apparent unlawful influence of [the judge] upon the Courts, he also acted in tandem with both [the trial judge and counsel for the defendant] in order shield [sic] and protect [the defendant], against Plaintiff's claims of discrimination." Complainant was the plaintiff-appellant in the appeal complained about. The two documents attached to the complaint describe certain evidence and assert activities by the defendant's counsel. This portion of the complaint challenges merits determinations and is therefore dismissed pursuant to 28 U.S.C.

§ 352(b)(1)(A)(ii). In one sentence in one of the attachments, the Complainant states that "[t]here had to have been impermissible ex parte communications between Counsel and the Courts." No specific communication is cited. No witness or participant is cited. This is in fact nothing but a bare assertion. It represents nothing other than Complainant's speculation or unsupported belief that there was some sort of conspiracy in the assignment of the judge to the panel that decided his appeal. Thus, Complainant's assertion that there were ex parte communications that involved the judge is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as lacking specific factual allegations and sufficient evidence to raise an inference that misconduct occurred.

(4) "[The judge] knowingly and willfully . . . did violate the Rules of Chapter 1(b), of the Judicial Counsel [sic] Rule, governing to wit: (1) Conduct prejudicial to the effective and expeditious administration of the business of the Courts, (2) use of the Judge's office to obtain special treatment for friends and relatives, (3) improperly engaging in discussion with lawyers or parties to cases in the absence of representatives of opposing parties and (4) other abuses of judicial office which reflected non-adherence to the Constitution of the United States." This broad assertion is related to Complainant's belief that "segments of material evidences that were included within the briefs that Plaintiff submitted to the Appeals Court" were "discriminately ignored by [the judge]." Apparently, Complainant believes that because the reviewing court did not accept his arguments or find convincing his evidence described in court papers, there must have been misconduct. There is no evidence to support Complainant's assertion, which is only a speculative belief that Complainant holds. Thus, this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). Further, to the extent Complainant is challenging the court's weighing

of the evidence, his assertion is directly related to the merits of the court's order in his appeal. Thus, this portion of his complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

(5) "In this case, Plaintiff believes nepotism was an issue as *Black Letter Law* was redefined, granting unlawful favor to [the defendant]." This assertion is directly related to a determination on the merits in Complainant's case, although couched as a "nepotism" assertion. Thus, this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). Further, no specific act is cited and no witness or document was identified. Because there is no evidence, only Complainant's belief, to support his assertion of nepotism, this portion of the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). Complainant does not state that he heard or saw the judge do anything (or that anyone else did anything) that might suggest there was "nepotism." No evidence was cited that defendant and the judge are related. If they are not, then by definition nepotism cannot exist.

(6) "[The judge's] efforts in protecting [the defendant] lead [sic] him to purposefully overlook factual material. . . . This ruling is a blatant act of prejudice and a move towards retaliation against Plaintiff for his efforts in challenging the illegal and unconstitutional actions of the Court." As this assertion is directly related to a determination on the merits in Complainant's case, this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that the assertion might suggest that the judge was biased, there is no support for such an assertion, except for Complainant's belief that, because he did not prevail, the judge must have been biased. Complainant does not state that he or anyone else heard or saw anything that would suggest the judge was biased. Again, no witness or document is identified.

Complainant's bare assertion of bias is not supported by any evidence, much less evidence sufficient to raise an inference that misconduct occurred, and thus this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).

(7) Complainant lists various items in evidence that he believes were overlooked by the court. The assertion that evidence was overlooked is directly related to the merits of the court's ruling and is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

(8) "[The judge] in this case witnessed numerous acts of misconduct committed by the lower court and also the Misconduct of Defense Counsel, yet failed to call for sanctions . . . ." This assertion lacks sufficient evidence to raise an inference that misconduct occurred. As with all of Complainant's other unsupported assertions, the only evidence provided is Complainant's summary of evidence or arguments that he states he presented to the court and assertions that counsel for the defense behaved improperly. There is no evidence, only Complainant's surmise, to support any of these charges of misconduct against the judge. Thus, this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). To the extent the Complainant suggests that the judge erred by not sanctioning counsel for the defense, such a suggestion is directly related to the merits of the court's determinations and thus this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

(9) Complainant states that the judge "allowed social and perhaps family relationship to influence judicial conduct. [The judge] failed to diligently discharge his administrative responsibilities, exposed the legal profession and the courts to obloquy and violated standards of professional responsibility that illegally confiscated from Plaintiff his Civil Rights and Constitutional Rights as a citizen. The Courts [sic] actions

were discriminatory." Complainant does not adequately explain how the judge might have allowed social or family relationships to influence his determinations, how the judge's actions were discriminatory, or how any of the other assertions constituted misconduct. The only explanation that is presented by the Complainant is the Complainant's belief that the judge improperly ruled against the Complainant on the merits of his appeal. To the extent that Complainant implies that the ethnicity of the judge created bias, no support is provided, no act specified, no witness or document is identified. Thus, the insinuation is not capable of being proven or disproven by investigation. Certainly, bias cannot be automatically raised just from similar ethnicity of a judge and a party. Because no facts are alleged in the complaint to warrant an investigation or raise an inference that misconduct occurred in this regard, this portion of the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(i)(A)(iii).

Accordingly,

IT IS ORDERED THAT:

The complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and 28 U.S.C. § 352(b)(1)(A)(iii).

April 3, 2008

Date

/s/ Paul R. Michel

Paul R. Michel  
Chief Judge

The complainant may petition the court for review of this order. Such a petition for review must be received in the clerk's office within 30 days of the date of the clerk's letter transmitting this order.