

Complaint of Judicial Misconduct

Complainant

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Subjects

The Honorable Lacey A. Collier
The Honorable Wilbur D. Owens, Jr.
The Honorable Roger Vinson
The Honorable Gerald B. Tjoflat

Introduction

On or about March 18, 1994, complainant filed a complaint of judicial misconduct with the Clerk of the United States Court of Appeals for the Eleventh Circuit against district judges, as well as an appellate judge, who presided over or was involved in her Northern District of Florida case against Pensacola Junior College, number 89-30351. The complaint alleged that The Honorable Lacey A. Collier and The Honorable Roger Vinson of the Northern District of Florida, The Honorable Wilbur D. Owens, Jr. of the Middle District of Georgia, and The Honorable Gerald B. Tjoflat, then Chief Judge of the Eleventh Circuit, through systematic and/or combined efforts, had engaged in conduct to impede, to obstruct, and ultimately to destroy complainant's case. The complaint further alleged that the judges' biased or prejudicial conduct stemmed from extrajudicial interests in that the force behind the unfair treatment to which she had been subjected was the defendant's powerful general counsel, attorney M. J. Menge, with whom complainant had been embroiled in a protracted and an extremely bitter battle over her allegations against the college prior to filing her case in court. (See affidavit attached hereto as Exhibit A.)

Thereafter on or about March 24, 1994, United States Circuit Judge of the Eleventh Judicial Circuit, The Honorable Phyllis A. Kravitch, acting in the Circuit Chief Judge's stead, dismissed the complaint against each district court judge individually while stating that the complaint "consists of generally conclusory allegations concerning the complained of district judge in handling of complainant's Northern District of Florida's case, number 89-30351," that "complaints such as this one that are directly related to the merits of a judicial decision are not reviewable under 28 U.S.C. [Section] 372(c)," and that "the complaint contains no allegations against the complained of district judge that could be considered as 'conduct prejudicial to the effective and expeditious administration of the business of the courts' within the meaning of 28 U.S.C. 372 (c) (1)." Accordingly, the judge also dismissed the complaint against the appellate judge.

Following the dismissal of the complaints, on or about April 8, 1994, complainant sought the assistance of her home state representative in Congress, then United States Senator Howell Heflin, D-Ala., of the Senate Judiciary Committee. She sought assistance from Senator Heflin in order to determine whether she had any other recourse with respect to the judges' conduct, perhaps even the option of filing a complaint with the Department of Justice. Senator Heflin, however, asked the Administrative Office of the U. S. Courts to review the material that she had provided him. On or about April 29, 1994, in response to Senator Heflin's request, William R. Burchill, Jr., general counsel, advised Mr. Heflin, among other things, that he had "... conferred with the clerk of the Court of Appeals for the Eleventh Circuit regarding the procedural history of [complainant's] judicial conduct complaint. . . ." and had determined that "the complaint is clearly premised upon [complainant's] unhappiness at the outcome [the case had not even gone to trial] of her civil rights litigation against Pensacola Junior College."

Thereafter, the complained-of judges continued to engage in conduct to impede, to obstruct, and ultimately did destroy complainant's case, along with her faith in the judicial system.

It is a very difficult and painful experience for complainant to revisit this matter. However, in good faith, she is compelled to bring this complaint back before the Eleventh Circuit in the wake of new and compelling evidence publicly revealed in a newspaper article—evidence which substantiates her allegations of judicial misconduct based on personal and/or political interests. On November 7, 1999, in a "Sunday Profile" in the Pensacola News-Journal, the district judge who presided over complainant's case publicly disclosed facts which he was ethically obligated to disclose on the record in complainant's case, but knowingly, willfully, and deliberately failed to disclose. It is complainant's understanding that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned," pursuant to 28 U.S.C. 455. The facts disclosed in the newspaper article prove the existence of a substantial and serious issue concerning the judge's duty to have disqualified himself prior to taking substantive action in complainant's case—substantive action which had the effect of torpedoing complainant's whole case. (See newspaper article attached hereto as Exhibit B.)

Factual Allegations

Complainant alleges that the complained-of judges' systematic and/or combined efforts impeded, obstructed, and ultimately destroyed her case ~~in violation of~~ 28 U.S.C. Section 372 (c). In support thereof, she further alleges as follows: ^{pursuant to} *A.B.*

1. From about December of 1990 and continuing up to and including February of 1991, first presiding federal Judge Roger Vinson treated complainant in an unfair and hostile manner, including subjecting her to inflexible deadlines while favoring the defendant, to wit: On or about October 19, 1990, attorney David W. Moye, a formal federal prosecutor who was also a reserve in the U.S. Marine Corps, filed a notice of appearance in complainant's case. At the time, it appeared that virtually everyone in the Pensacola area was talking about the war in the Persian Gulf since Pensacola has a very close relationship with the military. Thus, prior to taking complainant's case, Mr. Moye did as much as he could to determine the likelihood of his being recalled to active duty and was told that it was not likely that he would be recalled. Thereafter on or about October 30, 1990, he appeared formidably with complainant at her deposition wherein she disclosed for the first time that she had an association with federal authorities then conducting a probe of individuals in connection with their high-profile investigation of Gulf Power Company. In less than a month after Mr. Moye appeared at complainant's deposition, he was recalled to active duty and given "less than two days notice." In the immediate aftermath of his departure, Judge Vinson showed complainant no consideration. At the same time, complainant was informed that pressure was being brought to bear on Mr. Moye's law firm to withdraw from her case. Accordingly, on or about January 22, 1991, Judge Vinson granted his law firm permission to withdraw from complainant's case. Simultaneously, Judge Vinson issued the following order which was sent directly to complainant: "Plaintiff shall have substitute counsel appear, or notify the Court that she is representing herself pro se, within 14 days from this date." The phrase "this date" in the order referred to the date on which the order was issued—January 22, 1991. However, the Civil Docket Sheet would tell a different story. Its listing for January 22, 1991, stipulates that "pltf shall have subst counsel appear or notify the Court that she is representing herself pro se, w/i 14 days from this date (2/8)." Once the facts were brought to complainant's attention regarding the judge's alleged extrajudicial interests with respect to her case, complainant asked the judge to step aside--initially in submitting In Camera information to the Court on or about January 10, 1991, and thereafter by filing a motion for the recusal of the judge on or about February 22, 1991. Subsequently, on or about February 28, 1991, Judge Vinson recused himself from the case. However, on or about September 8, 1994, roughly three and a half years later, Judge Vinson conspicuously visited the trial judge on complainant's case (Chief Judge Wilbur D. Owens, Jr. of the

Middle District of Georgia) in the courtroom in Pensacola during a break in the trial, even though Judge Vinson's chambers were located in the main courthouse in Pensacola on a different street roughly four or five blocks away.

2. On or about March 4, 1991, complainant's case was transferred to Chief Judge William Stafford in Tallahassee, Florida. Thereafter on or about July 19, 1991, the judge called an emergency hearing in Tallahassee in which complainant's new counsel was dismissed from the case after complainant provided the Court allegations of unethical conduct on the part of her new counsel in conjunction with the co-counsel for the defendant. On or about September 13, 1991, in a conference call, Judge Stafford strongly urged the defendant's co-counsel, D. Lloyd Monroe, IV, to advise the defendant to mediate complainant's case. Thereafter on or about September 16, 1991, in a shocking, terribly disturbing, and completely unexpected occurrence, complainant was approached by her confidante and secretary, Tommy Rodrigues, who demanded that complainant sign a written contract giving her 10% of any damages complainant might receive if the defendant settled the case. Ms. Rodrigues had earlier advised complainant that the defendant's foundation officials had been trying to reach her but that she had been avoiding them. Ms. Rodrigues told complainant that if she did not receive a written contract for 10% of complainant's lawsuit, she would disclose confidential information to the other side. Complainant, who was without counsel, refused to be a party to such a scheme and severed her relationship with Ms. Rodrigues, immediately. However, on or about October 9, 1991, Ms. Rodrigues submitted a letter directly to Judge Stafford dated September 25, 1991, in which she advised the judge that complainant had promised her 10% of her lawsuit. Immediately thereafter, the counsel for the defendant advised the judge that the defendant was not going to mediate the case.

3. Meanwhile, back in Pensacola, on or about November 20, 1991, Circuit Court Judge Lacey A. Collier was sworn in as the new federal judge for the Northern District of Florida, Pensacola Division. Unbeknownst to complainant or her counsel, attorney M. J. Menge, the defendant's powerful general counsel who had been embroiled in a protracted, bitter, and sometimes public battle with complainant over her allegations against the college and who had vowed to put an end to said allegations, had sat on Florida's powerful Federal Nominating Commission, where he was the most influential member on the panel, and played the leading role in getting the judge appointed to the bench. Unbeknownst to complainant and her counsel was the fact that Mr. Menge had even played the most prominent role in the judge's investiture. Moreover, unbeknownst to complainant and her counsel, Mr. Menge, among other things, was the judge's close, personal friend and mentor, to whom the judge owed his legal career! (See Exhibit B.)

4. On or about December 23, 1991, from out of the blue, complainant was advised by the court that her "case ha[d] been transferred to Judge Lacey Collier, U. S. District Court, Pensacola, Florida, . . ." Judge Stafford did not provide an explanation for the record as to why he had transferred the case back to Pensacola. Thereafter in presiding over complainant's case, Judge Collier engaged in the following conduct: (a) He knowingly, willfully, and intentionally failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned. (b) He knowingly, willfully, and intentionally failed to disclose facts that clearly suggested the existence of a substantial and serious issue concerning his duty to disqualify himself, and, as a result, the complainant was denied the opportunity to raise the issue or be heard on it prior to the judge taking substantive action on the case. (c) When complainant raised the issue of an alleged substantial relationship to merit disclosure by the judge by submitting a motion for his recusal, even then he failed to disqualify himself and, instead, granted the individual with whom he had the substantial relationship, attorney M. J. Menge, leave to withdraw from the case on or about April 23, 1992, as counsel of record for the defendant. (d) Prior to Mr. Menge withdrawing from the case and upon complainant filing a motion for the recusal of the judge, Mr. Monroe, his co-counsel, advised complainant's counsel on or about March 20, 1992, that "while we do not agree with the merit of

your motion, Mr. Menge is willing to immediately withdraw as counsel of record in this case if you will withdraw the portion of your motion which relates to Mr. Menge.” (e) On or about March 30, 1992, in the absence of complainant withdrawing the portion of her motion relating to Mr. Menge, Mr. Menge nevertheless withdrew from the case, stating that “the undersigned represents to the Court that the Defendant, The Board of Trustees of Pensacola Junior College, Florida, has been advised of the undersigned’s intention to withdraw as co-counsel, and has no objection to this motion for leave to withdraw.” (f) On or about July 28, 1992, Judge Collier and Mr. Menge appeared together on local television in Pensacola (they reportedly arrived at the studios together) and strongly denounced the Navy’s decision to remove their friend Adm. Jack Fetterman as head of Pensacola-based Navy Training Command amid allegations that he had protected a staff person accused of sexual harassment (Judge Collier asserted on television that the admiral was a “perfect human being”), even though neither individual had access to the Naval Inspector General’s report which detailed the facts in the case (videotape is in complainant’s possession). (g) The judge thereafter continued to take substantive action in complainant’s case, including willfully and knowingly permitting the counsel for the defendant to perpetrate a fraud on the court (permitted counsel for the defendant to submit a false, unsworn affidavit in support of the defendant’s motion for partial summary judgment), which resulted, on or about October 27, 1992, in the dismissal on summary judgment of complainant’s Section 1981 claim which afforded her a jury—dismissal based solely on the false affidavit. (h) After complainant filed a second motion for the recusal of the judge on or about November 25, 1992, he stepped aside but did so without issuing an order of recusal, thereby failing to state for the record the disqualifying circumstances that led to his stepping aside, which deprived the complainant of the opportunity to raise the question of nullity with respect to action taken on the case. On or about November 30, 1992, the case file was referred to Judge Collier. Then on or about December 7, 1992, Judge Collier referred the file back to Judge Stafford in Tallahassee.

5. Thereafter on or about December 14, 1992, then Chief Judge of the Eleventh Circuit, Circuit Judge Gerald B. Tjoflat, designated a successor to Judge Collier whose views were consonant with those of Judge Collier and Mr. Menge. Complainant was advised on or about December 30, 1992, that her case had been “reassigned to The Honorable Wilbur D. Owens, Jr., Chief judge of the Middle District of Georgia, pursuant to the attached letter from Chief Tjoflat.” Complainant was also advised by the court that the new judge would handle the case in Pensacola.

6. In presiding over complainant’s case, Judge Owens engaged in the following conduct: (a) He held the pretrial conference in Macon, Georgia on or about June 3, 1993, and forbade the complainant from attending the conference, even though she had made the trip to Georgia under dire financial circumstances. (b) He knowingly, willfully, and intentionally ignored undisputed facts, legislation (advising complainant’s counsel at the pretrial conference that “well, I haven’t researched Florida law”), and the constitutional requirement of “rule of law.” (c) He knowingly, willfully, and intentionally treated complainant and her counsel in an extremely imperious, intimidating, and abusive fashion, while affording the other side dignity and respect. (d) He knowingly, willfully, and intentionally proscribed rules to be followed in the proceedings but permitted the counsel for the defendant to break them at will. (e) At trial on September 6-8, 1994, he appeared to act both as counsel for the defendant and the presiding judge on the case. (f) He knowingly, willfully, and intentionally impeded the complainant’s counsel’s efforts to impeach the testimony of defense witnesses, including threatening complainant’s counsel with contempt of court. (g) He treated the counsel and an investigator from the Equal Employment Opportunity Commission (EEOC) in an intimidating and hostile manner. (h) He knowingly, willfully, and deliberately misrepresented material facts on which the case pivoted. (i) He ignored the fact that a key defense witness testified under oath at trial that the unsworn affidavit that he had provided the court in support of the defendant’s motion for partial summary judgment was false and that it had been prepared by counsel for the defendant. (j) He was visited in the courtroom during the trial on or about September 8, 1994, by Judge Roger Vinson, who had previously recused himself from the same case and whose

chambers were located in the main courthouse on a different street roughly four or five blocks away. (k) Thereafter on the same day in the presence of complainant and her counsel during a break in the trial, he loudly announced his intention to go and visit “[his] good friend Judge Vinson,” the same recused judge. (l) In open court, on the same day when the trial reconvened, Judge Owens called on the powerful counsel for the defendant, Mr. Menge, who was no longer serving as counsel for the defendant on the case (over two years after Mr. Menge had withdrawn from the case on April 23, 1992) or otherwise participating in the proceedings (he was seated in the gallery of the courtroom), to obtain an ear, nose and throat specialist to examine the complainant (the judge was aware of the fact that extremely bad blood existed between the powerful defense counsel and complainant via the complaint of judicial misconduct she had previously filed with the Eleventh Circuit which detailed the counsel’s alleged involvement in influencing the presiding judges on her case). (m) Mr. Menge thereupon selected his friend, whose particular expertise was plastic surgery, to submit a report to the court which contained a false diagnosis (a psychiatric diagnosis) and an opinion beyond the scope of his expertise. (n) Mr. Menge thereafter hand-delivered the false medical report to Judge Owens in the courtroom. (o) Judge Owens then read the false report into the record. (p) A couple of hours later on the same day, another doctor and a nurse practitioner examined the complainant and provided consistent diagnoses of complainant’s true condition--viral laryngitis. (q) The entire conversation that transpired between Mr. Menge and Judge Owens in the courtroom regarding Mr. Menge procuring a physician for complainant would later be conspicuously deleted from the official trial transcript prepared by Judge Owens’ personal court reporter. (r) The resulting doctored transcript indicates that the conversation regarding procuring a physician for complainant took place between Judge Owens and new counsel for the defendant on the case. (s) When complainant sought to address the problem of the false diagnosis with the doctor in question by submitting a letter to said doctor requesting a copy of the written report that he had provided the Court, Mr. Menge, via new counsel for the defendant, advised Judge Owens in writing that he found “it highly inappropriate for Ms. Davison to be threatening or harassing Dr. Pallin for the services he rendered at the request of Judge Owens.” (t) Immediately thereafter, on or about November 1, 1994, Judge Owens sent a terse letter directly to the complainant at her home address, not through her counsel, and admonished her in the following manner: “On Monday, November 7 th, when you appear in Valdosta, Georgia to testify, please be prepared to explain why you wrote an intimidating letter to Dr. John L. Pallin, a copy of which has been furnished to the court.” (u) Complainant requested the judge to recuse himself twice—once in open court and again following the incident involving Mr. Menge and the doctor—but the judge declined to do so in both instances. (v) He disregarded “clear and controlling law” and obliterated, distorted, and fabricated the facts in the record to do so. (w) He manipulated the facts and the law and made the case turn out favorably for the defendant. Accordingly, judgment was rendered in favor of the defendant on March 29, 1995.

7. The unfair treatment to which complainant was subjected at the district court level appears to have carried over to the appellate court. Information complainant provided the court to clarify an important material fact raised at oral argument on August 27, 1996, mysteriously could not be found in the clerk’s office for days, but was found after the appellate court had affirmed the lower court’s decision without rendering an opinion in the case on September 13, 1996. According to an individual in the clerk’s office, complainant’s information was found in a desk drawer.

Conclusion

Based on the foregoing, there should be no question that an investigation is warranted so as to establish that grounds exist for public discipline and/or recommendations for removal from office.

Additional documentation which supports the allegations contained herein can be made available upon request.