

APR 16 2014

FIFTH CIRCUIT
LYLE W. CAYCE, CLERKIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE:

The Complaint of Ty Clevenger Against United States District Judge Frank Montalvo, Western District of Texas, Under the Judicial Improvements Act of 2002.

Docket Number: 05-14-90059

O R D E R

Attorney Ty Clevenger complains that United States District Judge Frank Montalvo unlawfully issued a permanent protective order “purely on the basis of information that he received *ex parte*” and without providing the plaintiffs with notice or an opportunity to respond. Clevenger protests further that the judge “refused my request to see the [first] letter,” and “is sealing documents in order to cover something up and to save himself from embarrassment.” He also submits that in denying the plaintiffs’ request to rescind the protective order, and again in an order referring the plaintiffs’ motion for recusal to the chief district judge, Judge Montalvo’s justification that he issued the order “on the basis of an emergency ... is utterly implausible”, and “was an attempt to retroactively justify his unlawful activities.”

In addition, Clevenger asserts that the judge harbors “personal bias against my client and me as a result of those *ex parte* communications,” and “has been hostile toward[s] me since I expressed my objections”.

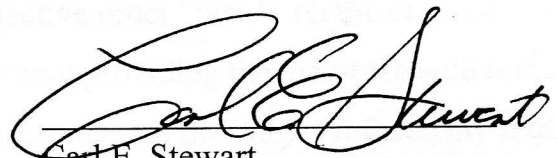
To the extent that the allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

The undersigned notes that neither Judge Montalvo's referral of the recusal motion "in order to afford the litigants the utmost assurance of fairness", nor the chief district judge's reassignment of the case "out of an abundance of caution", in any way constitutes an admission by Judge Montalvo, or a finding by the chief district judge, of judicial misconduct.

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.

The complaint is DISMISSED.

3/14, 2014


Carl E. Stewart
Chief Judge