

MAR 24 2011

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

IN RE:

The Complaint of John and Joanna Burke Against United States
District Judge Lynn N. Hughes, Southern District of Texas, Under the
Judicial Improvements Act of 2002.

Docket Number: 05-11-90087

O R D E R

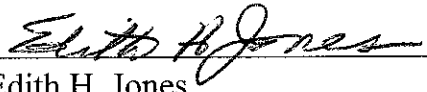
Pro se litigants John and Joanna Burke complain that United States District Judge Lynn N. Hughes acted in a “demonstrably egregious and hostile in manner” and “interjected, harassed and overshadowed” them at an initial hearing. For example, they assert that the judge “refused [their] constitutional right to argue the fact that the case should remain in Civil Court,” commenced “Trial of the Case” even though the Burkes allegedly had no prior notice that such issues would be addressed and had no time to prepare, and “refused to let [them] state their case [or] refer to any case law.” The Burkes allege that further Judge Hughes made “harmful, disrespectful and completely abhorrent” comments. They allege further that when they told the court that they wanted to retain counsel, the judge “ridiculed [them] and [their] case in its entirety and then demanded that they not get legal counsel and save on further litigation costs,” and “stated he would be there when the Foreclosure was scheduled with a wry smirk on his face.” The Burkes also protest that Judge Hughes scheduled a pretrial conference “without consideration of the fact [they] required time to find legal representation.”

However, a recording of the proceedings indicates that Judge Hughes was extremely solicitous toward them, suggested at the outset that they should retain counsel, and did not ridicule them or their claims in any way.

To the extent that the complaint relates directly to the merits of the judge's decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, there is insufficient evidence to support a finding of judicial misconduct, 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.

The complaint is DISMISSED.



Edith H. Jones
Chief Judge

March 21, 2011