

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JAN 04 2017
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-16-90150

MEMORANDUM

Complainant, a *pro se* litigant, has filed a barely intelligible judicial misconduct complaint against the subject United States Magistrate Judge. He appears to allege that that the magistrate judge's adverse rulings and other actions are evidence of "retaliatory" conduct.

Case 1: Complainant complains that despite presenting "colorful and clearly expressed" facts to the court, the magistrate judge "has been trying to dismiss my case ... from the very start" when she ordered him to show cause why the matter should not be dismissed with prejudice as time-barred. He further alleges that the magistrate judge "is calling wrong right" and "retaliated by sending U.S. Marshals to my mom's house to violate me for a probation I shouldn't have been on and she very well knew it." Complainant appears to assert that the resulting "illegal" incarceration "was meant to impede my efforts at pursuing prosecution" of the defendants in one or more of his lawsuits.

To the extent that the allegation relates directly to the merits of the magistrate judge's decision, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that these allegations are repetitive of allegations made and dismissed in a prior complaint proceeding, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, such a conclusory assertion of retaliation is insufficient to support a finding of judicial misconduct, and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant submits that the magistrate judge “hadn’t wrote to me for six months about the discrimination case. She waited until she sent the U.S. Marshals to my house to arrest me and then wrote me days later.”

The record does not support this allegation of deliberate delay—the magistrate judge ruled promptly throughout the case—and the allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Case 2: In March 2016, the presiding United States District Judge adopted the magistrate judge’s recommendation that the lawsuit be dismissed for lack of subject matter jurisdiction and for failure to adequately state a claim. Complainant asserts that a clerk’s office employee told him in April 2016 that the case was pending, and protests that the magistrate judge intentionally obstructed his prosecution of his claims in May 2016 by terminating as moot—because the case was closed and the time for appealing the final judgment had lapsed—his motion for her recusal.

To the extent that these allegations are repetitive of allegations made and dismissed in a prior complaint proceeding, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, such a conclusory assertion of intentional obstruction of Robinson’s prosecution of his claims is insufficient to support a finding of judicial misconduct, and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Case 3: Complainant complains that the magistrate judge sent U.S. Marshals to question him about “a letter I wrote the court. In the letter I wrote that we people make the communities, this country we live in, in so many words, referencing the incident of five Dallas Police Officers being killed. The magistrate seems to want to take away what little freedom I have left, to write and express myself.”

The allegation relates directly to the merits of the magistrate judge’s decision, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Case 4: Complainant complains that within seven days of his filing the lawsuit, the magistrate judge ordered him to show cause why the case should not be dismissed. He contends that the magistrate judge “was hurriedly trying to dismiss [the lawsuit].”

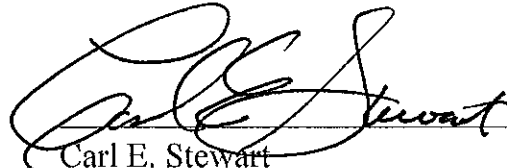
Such a conclusory assertion of improper conduct is insufficient to support a finding of judicial misconduct, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

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.

This is complainant's third merits-related, frivolous and conclusory judicial misconduct complaint in three months, and includes allegations raised and dismissed in a prior complaint. The filing of repetitive complaints is an abuse of the judicial misconduct complaint process. Complainant is WARNED that should he file a further merits-related, conclusory, frivolous or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.

W. R. ... 30
March 16, 2016


Carl E. Stewart
Chief Judge

MAR 08 2017

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

No. 05-16-90150

Petition for Review by [REDACTED]
of the Final Order Filed January 4, 2017

Dismissing Judicial Misconduct Complaint Against
[REDACTED]

Under the Judicial Improvements Act of 2002.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed January 4, 2017, dismissing the Complaint of [REDACTED], against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

March 2, 2017
Date

Priscilla R. Owen

Priscilla R. Owen
United States Circuit Judge
For the Judicial Council of the Fifth Circuit