

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
FILED

AUG 01 2017

FIFTH CIRCUIT  
WYLE W. GAYCE, CLERK

---

Complaint Number: 05-17-90047

---

MEMORANDUM

Complainant, a state detainee, has filed a judicial misconduct complaint against the subject United States District Judge.

Complainant has been confined in a county detention facility since February 2015, and has filed two prisoner civil rights lawsuits against the county, and/or against the county sheriff, and/or the county detention facility, and/or the corporation contracted to provide medical care to inmates [“the county defendants”]. In Case A, complainant and the defendants consented to proceed before a United States Magistrate Judge, and the subject judge was removed as presiding judge prior to entering any rulings. Case B remains pending before the judge.

In the instant complaint, complainant declares that he recently learned that the judge’s child is an employee of the county sheriff’s office. Based on this information, he contends that the judge “is automatically appointed to 95 per cent of all civil actions filed by prisoners of the [county detention facility] ... for the sole purpose [sic] of getting favorable rulings for” the county defendants, “jail subcontractors, as well as well as [state] law enforcement agenc[ies] ... to help premotte [sic] his dauther’s [sic] employment.”

The assignment of cases in the particular district court is governed by an administrative order which provides that the clerk of court may assign civil cases on a defined percentage distribution by use of manual or automated random draw. According

to a review of cases filed since January 2013 by prisoners against any of the county defendants (i.e. including cases filed by prisoners not confined in the county detention facility), the judge has presided over 58% of those matters. Contrary to complainant's protestations, a review of the dockets for those cases shows that in matters in which final judgment has been entered, the judge dismissed 75% because of the plaintiffs' failure to prosecute, and 25% for substantive reasons.

Even assuming that the judge's daughter is an employee of the county sheriff's office, there is simply no evidence to support complainant's conclusory claims that the judge has engineered the assignment of county detention facility inmates' lawsuits against the county defendants to his docket "for the sole purpose of" ruling in their favor to ensure his daughter's promotion.

Without presenting any evidence in support of the claim, complainant further alleges that the judge "factually premotted [sic]" the housing of federal detainees in the "overcrowded, filthy, unsanitary" county detention facility to help his daughter gain "possible premotions" as an employee of the county sheriff's office.

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, to the extent that complainant's allegations might be construed as complaining that, due to a purported conflict of interest, the judge should have recused himself *sua sponte* from lawsuits against the county defendants, the allegation is subject to dismissal as merits-related under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also alleges that the judge influenced the magistrate judge presiding by consent in Case A to rule in favor of the county defendants "to help premotte [sic]" his daughter. A review of the case shows that the magistrate judge granted the county defendants' motion for summary judgment because complainant had failed to exhaust administrative remedies and failed to state a claim upon which relief could be granted.


Complainant presents no evidence that the judge influenced the magistrate judge to dismiss complainant's lawsuit, or that the dismissal resulted in a promotion for the

judge's daughter. Such conclusory assertions 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).

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 and/or conclusory judicial misconduct complaint in less than four months. Complainant is WARNED that should he file a further merits-related or frivolous 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.

  
Carl E. Stewart  
Chief Judge

July 29, 2017