

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

OCT 17 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-17-90114

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MEMORANDUM

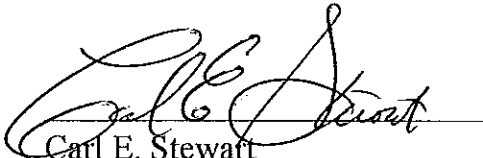
Complainant, a state prisoner, complains that despite filing a “Notice of Status of Federal Citizenship” in Case A, and despite not consenting to proceed before a magistrate judge in Case B, the subject United States Magistrate Judge ordered him to complete and file a § 2254 form in the latter case. He further contends that in retaliation for his writing to the Clerk demanding that the magistrate judge be “held in contempt for violating his own rules of procedure,” the magistrate judge recommended dismissal of Case B and falsely claimed that complainant had not responded to the order. Complainant also alleges that because he paid a \$5.00 “Special Deposit” when he filed his lawsuit, the magistrate judge’s instruction that he either pay the full filing fee or submit an application to proceed *in forma pauperis* was “spiteful, discouraging, and vengeful ... [and] nothing more than extortion.”

In addition, complainant appears to assert that the magistrate judge’s adverse rulings in a 2013 case and in Case B constitute evidence that his judgment is “clouded” by “his personal and extremely biased opinion of anyone who is incarcerated.” His further assertion that the magistrate judge “is to be considered incompetent/disqualified” to act in complainant’s pending and/or future lawsuits is construed as an allegation that the magistrate should have recused himself *sua sponte* in Cases A and B. Without presenting any evidence in support of the contention, complainant also surmises that the magistrate judge interfered with the presiding judges’ referrals of preliminary matters in complainant’s cases to ensure referral to himself.

To the extent that the allegations relate directly to the merits of the magistrate judge's decisions, including any implicit decision not to recuse *sua sponte*, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that complainant is alleging that the magistrate judge, to whom the presiding judge referred preliminary matters pursuant to 28 U.S.C. § 636(b)(1)(A), lacked jurisdiction to issue non-dispositive orders and make recommendations, is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, such conclusory assertions of bias against prisoner litigants and of deliberate interference with the presiding district judges' referral of preliminary matters are insufficient to support a finding of judicial, and are therefore also 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.

An order dismissing the complaint is entered simultaneously herewith.

  
Carl E. Stewart  
Chief Judge

October 11, 2017