

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

OCT 17 2017

Docket Number: 05-17-90115

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a state prisoner, alleges that the subject United States Magistrate Judge acted improperly and issued adverse rulings in retaliation for complainant's pursuing his constitutional rights. For example, complainant asserts:

- The magistrate judge engaged in *ex parte* discussions with defense counsel. Complainant provides no evidence in support of this contention.
- The magistrate judge's order to provide a more definite statement of his claims included "51 questions ... all set up to try and trap me into saying something that will get my case dismissed on top of having [to file the statement by a deadline] or my case would be dismissed anyway."
- The magistrate judge reduced the 30-day extension of time to file the statement to one-week "hoping I don't meet that deadline so he can dismiss my claims."
- Two days before an evidentiary hearing, the magistrate judge rescheduled it.
- The magistrate judge's denials of complainant's motions for temporary restraining orders and for preliminary injunctions have resulted in the ongoing violation of complainant's rights by the defendants.

To the extent that the allegations relate directly to the merits of the magistrate 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 and *ex parte* communication 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).

Complainant further alleges that the magistrate judge retaliated against him during the evidentiary hearing, conducted by video conference, by “not allow[ing] me the time needed to do my opening statement, yet he was trying to rush me with questions I’ve already answered in my [pleadings].” He protests that when he explained that he did not want to provide answers that would amend or “cancel out” his pleadings, the magistrate judge “interrupted me and said we don’t have time for any legal talk and terms. Let’s just talk, he said.”

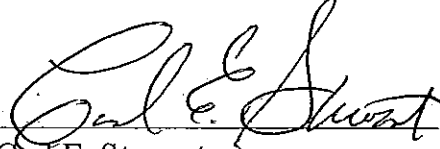
A review of the audio-recording shows that the magistrate judge explained that the hearing was not a trial, rather he was simply seeking clarification of complainant’s claims. He was patient and courteous throughout the hearing, and afforded complainant great latitude in responding at length to questions. The magistrate judge only “interrupted” when complainant repeated claims already part of the pleadings, or when the responses were unhelpful.

The record clearly contradicts complainant’s claim that the magistrate judge treated him unfairly during the evidentiary hearing, and the allegation is 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.

October 11, 2017


Carl E. Stewart
Chief Judge

NOV 28 2017

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-17-90115

Petition for Review by [REDACTED]
of the Final Order Filed October 17, 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 October 17, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

11-15-2017
Date

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