

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

OCT 17 2017

Docket Number: 05-17-90122

FIFTH CIRCUIT
LYLE W. GAYGE, CLERK

MEMORANDUM

Complainants, two *pro se* litigants, have filed a rambling, convoluted, and repetitive 58-page judicial misconduct complaint against the subject United States District Judge.

Complainants allege that the judge improperly permitted a magistrate judge to issue orders and a Report and Recommendations without the magistrate judge being “specially designated to exercise such jurisdiction by the district court ... and without the parties consenting to the magistrate judge's authority.”

A litigant has no right to object to the assignment of nondispositive matters to a magistrate judge under 28 U.S.C. § 636(b). See Jackson v. Cain, 864 F.2d 1235, 1247 (5th Cir. 1989). The allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainants further assert that by adopting the magistrate judge’s recommendation to dismiss their claims against all defendants, the judge “manifested bias and prejudice towards [us] and abused his authority and position” and “caused us irreparable injuries, substantial loss and damages ... depriving [us] of Due Process and Equal Protection ... under the U.S. Constitution.” Complainants also submit that the judge “intentionally and willfully failed to dispose of the judicial matter promptly, efficiently, and fairly” by not granting their “request for stay pending consideration” of their claims.

To the extent that these allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other

respects, such a conclusory assertion of bias 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, complainants contend that by permitting the Clerk to terminate erroneously for insufficient service their “timely filed and adequately [sic] Motion[s] for Preliminary Default,” the judge “fail[ed] to comply with law, federal rules, and his mandatory duty, obligation and responsibility to grant justice and relief .” They seem to further allege that the judge allowed some defendants to file an untimely motion for an extension of time to answer the complaint, and/or permitted those defendants to claim they had not been properly served, and also “thwart[ed] aspects of this judicial pending function with a corrupt state of mind for the improper purpose to influence others ... and denied justice and access to the Court to [us] when denying [our] Motion and Order Requesting Services [sic] Upon These Defendants.”

To the extent that these allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation of a “corrupt state of mind” is nonsensical because the relevant order was issued by the magistrate judge, not the judge, and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainants also complain that even though their pleadings included information that “the last time [we] had received a warning and did not take heed from the Defendants, [we] were threatened with bodily harm by being shot at three times with a deer rifle and suffered almost [sic] blindness thereafter,” the judge stated in “rendering his judgment ... Warning Case Closed” which “made [us] feel threatened with more violence, bias and prejudice.” In response to a request to clarify the allegation, complainants state: “It was hell that [we] expressed in [our] oppositions to the magistrate judge's orders and Report and Recommendations, and now for this judge to give us another warning is immortal [sic] and uncalled for.”

A review of the record shows that neither of the orders issued by the judge included any such “warning.” Regardless, even if the judge stated that the case was closed, the allegation that the statement was intentionally aimed at engendering fear of

“violence, bias and prejudice” is frivolous on its face, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainants contend that the judge “obstruct[ed] the due administration of justice by failing to take appropriate remedial action” on their claims that the defendants “were filing improper and untimely motions”, “continually committing perjury, bad faith, constructive and extrinsic fraud, employing deceit, perjury, giving false information,” and were engaged in “criminal collusion, theft by deception, and false pretense.” They propose that the judge was “intent to keep [us] from receiving any justice” and acted with the “malicious purpose of harboring and protecting the defendants from receiving punishments for their criminal crimes.”

Furthermore, complainants complain that in denying their Rule 60(b)(4) motion for relief from judgment, the judge erroneously and prejudicially held that a minor child had no basis for jointly filing the motion because his father, through whom complainants contended the minor child was appearing, was not a plaintiff, and thereafter the judge failed to appoint a guardian ad litem to represent the minor child’s interests.

To the extent that these allegations relate directly to the merits of the judge’s decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertions of favoritism towards the defendants is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Without presenting any evidence other than the dismissal of their claims, and the denial of their Rule 60(b)(4) motion for relief from judgment, complainants conclude that the judge:

- “acted without subject matter jurisdiction”;
- “manifested bias and prejudice to [us] because [we are] *pro se* and poor”;
- ...caused [us] to be subjected to a miscarriage of justice, irreparable injuries, substantial damages and injuries of being denied a jury trial, denied access to the court and equal rights under the right [sic]”;

- violated the Code of Conduct for United States Judges by failing to “uphold and promote the independence, integrity, and impartiality of the judiciary,” “avoid impropriety and the appearance of impropriety,” and “maintain professional competence in the law,” and “blatant[ly] acted in a manner de-promoting [sic] public confidence in the integrity and impartiality of the judiciary”;
- “invalidated” and “failed to respect and comply with federal law, federal rules, and the U.S. Constitution” by “grant[ing] unlawful relief and rights to these Defendants”; and,
- engaged in “a well thought out deceptive scheme as means to defeat” their civil rights by denying the Rule 60(b)(4) motion.

To the extent that these allegations relate directly to the merits of the 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, conspiracy, and deception 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.

An order dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart

Chief Judge

October 11, 2017

DEC 20 2017

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-17-90122

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.

12-16-2017
Date

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