

OCT 30 2017

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket Numbers: 05-18-90004 and 05-18-90005

M E M O R A N D U M

Complainant, a state prisoner, has filed a barely intelligible judicial misconduct complaint against the two subject United States Magistrate Judges regarding three prisoner civil rights proceedings.

Complainant states that despite his sending several notices of change of address to the district court clerk, and sending further letters complaining that the clerk had failed to update the address, the magistrate judges initially recommended that two of the lawsuits be dismissed for want of prosecution after court notices mailed to complainant's former address were returned as undeliverable. He protests that the magistrate judges' erroneous findings that he did not provide notice of a change of address were "slander ... used as a reason to dismiss my cases." The undersigned notes that both magistrate judges withdrew their recommendations after complainant advised the findings were erroneous.

To the extent that the allegation relates directly to the merits of the magistrate judges' decisions, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion that the magistrate judges intentionally fabricated grounds to recommend dismissal of complainant's lawsuits 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).

Complainant further protests that in recommending dismissal of his lawsuits under 28 U.S.C. 1915(g), the magistrate judges "call my therein truths in the cases frivolous, malicious, fails to state claim of relief. This is clearly an act of retaliation against me by Magistrate Judge B and his co-worker judge friends. ... [The three cases] were long then

beforehand been [sic] filed and in order to dismiss or reject a 1983 submission/allow only due to danger would be if submitted a 1983 section after the fact.”

As neither magistrate judge addressed the merits of complainant’s claims in their recommendations, it appears complainant is alleging that the magistrate judges intentionally delayed entering recommendations until after he had accrued second and third strikes under 28 U.S.C. § 1915(g) in another district court for filing lawsuits that were frivolous or failed to state a claim upon which relief could be granted.

A review of the dockets shows that there is no evidence of delay in two of the cases, i.e., both magistrate judges entered orders and recommendations in the months preceding the three-strikes rulings. To the extent that the allegation relates to those proceedings, it is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant complains of an eight-month delay by Magistrate Judge A in entering recommendations in the third case, the conclusory assertion that the delay was deliberate 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).


Complainant also alleges that “I am being subjected to court abuse because I am sticking up for my rights in the failure of [Magistrate Judge B] deliberately [sic] acts to deprive me of my civil rights.” For example, he contends that Magistrate Judge B’s adverse recommendations were made in retaliation for complainant’s alleging, in various motions and letters in several proceedings, that the magistrate judge had engaged in judicial misconduct. He further contends that Magistrate Judge A entered adverse recommendations, “encouraged” by Magistrate Judge B, because complainant alleged misconduct by “his fellow co-worker.”

To the extent that these allegations relate directly to the merits of the magistrate judges’ decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of retaliation and conspiracy 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 fifth merits-related, frivolous, and/or conclusory judicial misconduct complaint in two months. Complainant is WARNED that should he file a further merits-related, frivolous, or conclusory 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

October 16, 2017