

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

DEC 13 2017

Complaint Number: 05-18-90006

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

M E M O R A N D U M

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

Complainant alleges “there was a house warrant signed by [the magistrate judge] ... [on] Aug 30, 2016 ... [eight days] before the affidavit was written.”

A review of the record shows that the search and seizure warrant and the supporting affidavit were both signed on August 30, 2016, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the magistrate judge lacked jurisdiction to “rule on” his motions to suppress, and this “abus[e of] judicial authority deprived me of my right to have a suppression hearing ... and deprived me of a fair trial.” He also asserts that the recommendations showed that the magistrate judge “read the [DEA agent’s] affidavits with a biased mindset,” and “continuously supported false accusations and contradictions, not facts.” In addition, complainant contends that the magistrate judge improperly granted defense counsel’s oral motion “to waive my right to a fast and speedy trial. That was against my demands which is a constitutional violation.”

The magistrate judge’s non-dispositive recommendations regarding the motions to suppress did not violate 28 U.S.C. § 636(b)(1)(A), and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent that the allegations relate directly to the merits of the magistrate judge’s recommendations and other rulings, 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).

Complainant also alleges bias in the magistrate judge's demeanor, statements, and decisions during a hearing to address concerns complainant raised in a letter to the court regarding the representation of defense counsel. He claims that in response to his statement that defense counsel refused to file a motion to recuse the magistrate judge for signing an (allegedly) invalid search and seizure warrant, the magistrate judge "went on a rant" commenting:

- "... that I want the case to be over in one day"; "how my co-defendants didn't challenge anything and plead guilty"; "how I think I'm smart"; and, a magistrate judge's signing a warrant was not, in itself, a sufficient basis for a recusal;
- "... he was going to take my lawyer off the case, so either I can go pro se or he can assign me an attorney. I then asked how can he fire someone I hired. His response was "usually people standing where you are at are assigned a lawyer.'"
- "He then said that the only way he would consider recusing himself was if I write the motion myself. He added that, he will not accept any motions from me if my lawyer was to write them."

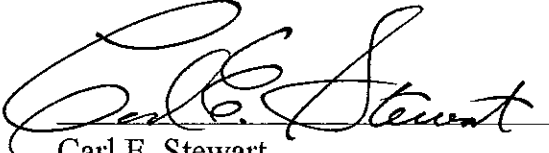
Complainant protests that throughout the hearing, the magistrate judge "was not seeking fairness, didn't have an impartial mindset, and made no effort to protect my rights." He submits that the magistrate judge "bullied", "demeaned", "intimidated", and interrupted him, and concluded the hearing before complainant had finished presenting his concerns.

To the extent that the allegations relate directly to the merits of the magistrate judge's decisions during the hearing, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, complainant's assertions that the magistrate judge "bullied", "demeaned", "intimidated", and interrupted him are not supported by the audio-recording of the hearing which indicates that, overall, the magistrate judge was courteous, patient, and thorough in addressing each concern complainant raised. These allegations are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that the magistrate judge occasionally expressed frustration at complainant's argumentative responses to his explanations of law and procedure, in Liteky v. U.S., 510 U.S. 540, 555-556 (1994) the U.S. Supreme Court held that judicial bias is not established by a judge's "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune." These allegations 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

December 2, 2017