

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

JAN 16 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-18-90085

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MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Magistrate Judge “failed to follow mandatory procedures established by [law], “failed to conduct an independent investigation,” and “failed to issue an order to show cause” regarding complainant’s June 2015 motion for sanctions against defense counsel for allegedly knowingly fabricating or misrepresenting evidence in a motion for summary judgment. He further alleges that the magistrate judge’s denial of the sanctions motion—issued after defense counsel filed a response in opposition to the motion—constitutes evidence of “judicial misconduct, gross negligence, prejudice and extreme bias against [me] ... in favor of the [state Attorney General].”

Complainant also complains that in recommending that the district court grant the defendant’s motion for summary judgment without having conducted an independent investigation into complainant’s claims of fraud upon the court, the magistrate judge acted “in a manner to be said [sic], extremely bias and prejudice, grossly negligent and arbitrarily, against a pro se litigant and in favor of the [state Attorney General].”


In addition, complainant submits that the Fifth Circuit’s reversal and remand of the district court’s final judgment on the basis of a genuine dispute as to the material facts constitutes proof that the magistrate judge should have conducted an independent investigation, and that defense counsel “compelled” the magistrate judge “to assist ... in the commission of fraud on the court.”

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 conspiracy and bias lack sufficient evidence to raise an inference that misconduct has occurred, 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.

January 12, 2018

  
Carl E. Stewart  
Chief Judge