

Judicial Council for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 5, 2023

Lyle W. Cayce
Clerk

Complaint Number: 05-23-90016

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States Magistrate Judge in his pending 42 U.S.C. § 1983 proceeding.

Complainant complains that the magistrate judge “refused to respond to my first Preliminary Injunction [motion]” in which he claimed prison officials were providing inadequate healthcare for injuries he suffered while housed in a different prison unit.

However, the docket records that the magistrate judge ordered that those claims be severed and that a new cause be opened, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent, if any, that complainant is alleging undue delay in ruling on the motion, a delay of twelve weeks does not, of itself, constitute judicial misconduct. There is no evidence to suggest that the delay in judicial action was either intentional or due to lack of diligence, and the allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

Complainant further complains that the magistrate judge denied his fourth motion for injunctive relief in which he sought to enjoin prison officials

from housing four inmates--who were allegedly involved in the attack on him—in the same unit as complainant.

However, the magistrate judge did not deny the motion for injunctive relief. She withdrew her initial recommendation to deny the motion and ordered that all claims regarding the alleged danger faced by complainant be severed and transferred to another division of the court. The allegation appears to relate directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also complains that the magistrate judge's adverse rulings have prejudiced his ability to prosecute his claims and demonstrate bias in favor of the defendants. For example:

- The magistrate judge erroneously and improperly denied complainant's multiple motions to appoint counsel and multiple motions for discovery and barred him from filing any further motions for such relief.
- In a Report and Recommendations, the magistrate judge stated that while complainant's prison grievances would have alerted authorities to his claims of generally being in danger and to [Defendant A's] negligent or intentional role in his assault, the grievances did not address his claims against Defendant B. The magistrate judge recommended that the court should dismiss complainant's claims against Defendant B for failure to exhaust administrative remedies. Complainant alleges that the magistrate judge's statement demonstrated "that she is about to apply an outdated standard of review" and/or "she has already resolved . . . to conclude that defendant's actions were only negligent which is a State [law] issue. . . . This is unfair and is favoring the defendants."
- The magistrate judge also recommended that claims against a state agency made in complainant's amended complaint should be

dismissed on the grounds of immunity and, if the claims were construed as being against individual agency members, they should be dismissed for failure to exhaust administrative remedies. Based on the magistrate judge's recommendation that summary judgment should be granted on those claims, complainant protests that the magistrate judge "moved for summary judgment . . . without [defense counsel] having to do so" and thereby "willful[ly] and/or intentional[ly] . . . acted in the role of defense attorney . . . instead of fair adjudicator."

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of impropriety, prejudice, or bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as "lacking sufficient evidence to raise an inference that misconduct has occurred."

In addition, complainant complains that the magistrate judge delayed ordering service of process on Defendant A for ten weeks. A delay of ten weeks does not, of itself, constitute judicial misconduct. There is no evidence to suggest that any delay in judicial action was either intentional or due to lack of diligence, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

Finally, complainant states that he has "been informed by other inmate litigators that the court is declining to consider pro se plaintiffs' lack of legal materials that has [sic] been illegally deprived for retaliatory purposes and moving forward with the case." He recounts further that he was also "informed that the magistrate judge makes a recommendation, and when the pro se inmate addresses to the court that he has been illegally deprived of his

legal material, the court construes that notice as an objection and rules in favor of the Defendants.”

Complainant does not point to any recommendations, “construed objections,” or orders in his case—let alone in the cases of “other inmate litigators”—that are relevant to this “information.” To the extent, if any, that complainant is complaining that the magistrate judge recommended that the court should deny his motion for a preliminary injunction to enjoin prison officials from denying him access to legal materials in the prison library, it relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant’s complaint is also riddled with allegations that various motions, objections, and “letters to the head judge” he filed have not been docketed. Docketing is the responsibility of the district court clerk’s office and, to the extent, if any, that the allegation might be construed as being directed at the magistrate judge, it is subject to dismissal as frivolous 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.



Priscilla Richman
Chief United States Circuit Judge

April 5, 2023