

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

MAR 19 2019

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Docket Numbers: 05-19-90037 and 05-19-90038

REVISED MEMORANDUM

The order entered March 11, 2019 dismissing the above-referenced judicial misconduct complaint is vacated and is replaced by this revised order.

Complainant, a pro se litigant, alleges that the subject United States District Judge erroneously denied his motion to recuse the subject United States Magistrate Judge. He further posits that the judge's "impaired judgment in the Order may be due to [a] stroke." In the motion to recuse and in his complaint, complainant claims that the magistrate judge "is listed as a practicing attorney with Law Firm A" and submits a copy of a partner-information page that is not accessible on the law firm's public website.

The undersigned notes that the magistrate judge is a former partner in Law Firm A. When he left the firm to become a magistrate judge nine years ago, his name was removed from the law firm's name. It appears that in updating the law firm's website, the website administrator did not completely remove the outdated partner-information page and it remained accessible as an "orphan page" via an internet search. The undersigned notes further that since the complaint was filed, the magistrate judge has contacted the website administrator who has taken steps to remove the outdated page.

Regardless, to the extent that the allegations relate directly to the merits of the judge's decision to deny the motion to recuse, and the magistrate judge's implicit decision not to recuse sua sponte, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). To the extent, if any, that complainant is alleging that the magistrate judge was responsible for the outdated information on the law firm's website, appropriate corrective action has been taken through the removal of the outdated page. *See* 28 U.S.C.

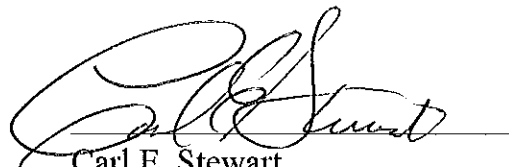
§ 352(b)(2). In other respects, the assertion of judicial disability against the judge appears entirely derivative of the merits-related charges, but to the extent that the allegation is separate, it is wholly unsupported, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also asserts that there is a conflict of interest in the underlying proceeding because attorneys from Law Firm X are representing certain defendants, and the district court's website shows that another Law Firm X attorney served as a Special Master in unrelated multidistrict litigation. Complainant specifies no misconduct by either the judge or the magistrate judge in relation to the purported conflict of interest.

A review of the multidistrict litigation docket indicates that the matter was not assigned to the subject judge, and the allegation against him is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). While the docket indicates that the subject magistrate judge assisted the presiding judge, complainant's conclusory assertion is insufficient to support a finding of judicial misconduct and is therefore also subject to dismissal under 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

March 14, 2019