

FEB 20 2020

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90038 through 05-20-90040

MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge and the subject United States Magistrate Judge in two civil proceedings. She also alleges misconduct by the subject Chief United States District Judge.

Complainant complains that despite neither party seeking leave to file under seal in Case 1, her ex parte motion for a temporary restraining order (Document 30) and the defendant's motion for sanctions (Document 31) were, and remain, sealed. "I am alleging the reason the documents are still sealed without any valid reason is because they are each evidence of a crime by the [defendant]."

As indicated by the full title of Document 31, the defendant explicitly requested to "file under seal" and set out its reasons in a footnote. There is no explanation on the docket regarding the decision to seal Document 30.

Regardless, to the extent, if any, that the allegation relates directly to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion that the judge and the magistrate judge sealed the documents to cover up evidence of the defendant's purported crimes appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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."

Complainant further complains that the district judge and the magistrate judge have unduly delayed ordering service on the defendants in Case 2.

Pursuant to Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay.” As complainant does not allege the former, and there is no evidence of the latter, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). However, to the extent, if any, that the allegation might be construed as one of improper motive in delaying ordering service on the defendants, such a conclusory assertion is insufficient to raise an inference that misconduct has occurred, and is also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also complains that the magistrate judge improperly denied motions to recuse in both proceedings. In addition, she alleges that the chief judge “purposely assigned both of my cases to [the district judge and the magistrate judge] and instructed them to do illegal things.” Complainant further alleges that “at least eight false reports made to [Child Protective Services] were being made by or on behalf of [the chief judge].”

To the extent that the allegations relate directly to the merits of a decision or procedural ruling, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the entirely conclusory assertions that the chief judge deliberately interfered with the random assignment of complainant’s cases, the district judge and the magistrate judge have done “illegal things” at the chief judge’s instruction, and the chief judge filed false reports regarding complainant’s parenting, are so lacking in indicia of reliability that no further inquiry is warranted and are 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.



Priscilla R. Owen
Chief United States Circuit Judge

February 19, 2020