

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

NOV 09 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-16-90112

MEMORANDUM

Complainant, a federal prisoner, complains that the subject United States Magistrate Judge violated his due process rights and obstructed justice by “fail[ing] to advise me of my right to counsel pursuant to 18 U.S.C. § 3006A.”

Given that statute provides for judicial discretion in determining whether the interests of justice require representation, there is no absolute right to counsel, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that the magistrate judge erroneously held that his 28 U.S.C. § 2241 petition was improper, failed to address complainant’s jurisdictional arguments, and recommended dismissal of the petition before the defendants filed a response. He also asserts that the magistrate judge erroneously held that he failed to show that there was a substantial threat of irreparable injury if the injunction was not granted. Complainant concludes that these adverse rulings are the result of “extreme prejudice.”

To the extent that these 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 bias are insufficient to support a finding of judicial misconduct, 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.


Carl E. Stewart
Chief Judge

August 8, 2016