

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
DEC 16 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-17-90026 and 05-17-90027

MEMORANDUM

Complainant, a state prisoner, alleges that the subject United States Magistrate Judge lacked jurisdiction to rule on various motions, including his motions for summary, default, and final judgment.

Complainant appears to further allege that the magistrate judge issued an order denying his motion to compel the respondent to provide complainant with copies of state court findings and rulings from a state habeas corpus, but “signed” the order with the subject United States District Judge’s name using “a block letter name stamp purchasable at any stationary [sic] store.” The undersigned notes that the order in question bears the typewritten signature: “S/ [NAME OF JUDGE].”

There is simply no evidence that the judge did not issue the order, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also contends that by construing the 28 U.S.C. § 2241 petition as a 28 U.S.C. § 2254 petition, denying habeas relief, and denying the motion to alter judgment, the magistrate judge and the judge denied his rights and violated their oaths of office by refusing “to uphold the laws of the United States and the Constitution.”

These allegations relate directly to the merits of the magistrate judge’s and the judge’s decisions, and are therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant asserts that the magistrate judge “withheld” from the judge motions/pleadings complainant filed between October 2015 and October 2016.

A review of the record indicates that the district court clerk’s office promptly docketed complainant’s filings. Given that judicial officers and their staffs have access to all

documents filed on the docket, the allegation that any filings were “withheld” is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Noting an eleven-month delay between the filing of his objections to the magistrate judge’s report and the entry of final judgment, complainant submits that the judge and the magistrate judge “appear to have an ongoing practice of denying pro-se prison litigants access to the courts by inordinate delays of over a year to issue show cause on controversial issues effecting state post-conviction processes.”

While a delay of eleven months in judicial action in the underlying district court proceeding is undesirable, it does not, in and of itself, constitute evidence of judicial misconduct. Indeed, the court in question has an exceptionally high docket of *pro se* prisoner litigation, and there is simply no evidence that any delays in judicial action are due to a lack of diligence or an intent to deny *pro se* prisoner litigants access to the court, and the allegation is therefore also 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.

December 13, 2016
Date


Carl E. Stewart
Chief Judge