

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
JAN 04 2017
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Numbers: 05-17-90035

MEMORANDUM

Complainant, a federal criminal supervisee, has filed a judicial misconduct complaint against the subject United States Magistrate Judge who presided over hearings associated with the government's petition to revoke complainant's supervised release. Complainant argues that the magistrate judge was biased and, in particular, told complainant's attorney that "he didn't want to hear my side of the story."

A limited inquiry was conducted pursuant to 28 U.S.C. 352(a)(2). Complainant's attorney denied that the magistrate judge made, or that he told complainant that the magistrate judge made, any such statement. Rather, the attorney confirmed the recitation in the magistrate judge's order that the parties agreed to modification of the terms of supervision.

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).

Complainant further asserts that the magistrate judge denied him his Sixth Amendment right to represent himself.

The allegation relates directly to the merits of the magistrate judge's decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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 28, 2016


Carl E. Stewart
Chief Judge