

OCT 17 2017

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Docket Number: 05-17-90075

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MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Magistrate Judge cancelled a Spears hearing at which the issue of exhaustion of administrative remedies and complainant's motion for a preliminary injunction "[were] set to be discussed," and did so despite there being "no statute or rule of court requiring" cancellation of the hearing. Without presenting any evidence in support of the contention, complainant surmises that the magistrate judge's "callous and shocking" decision was made after "improper discussions with [defense] counsel" in which it became "obvious that the defendants could produce no evidence" to counter complainant's claims. He further asserts that the magistrate judge's decision was aimed at concealing the defendants' "longstanding policy of not providing hepatitis medication," and "can logically be presumed" to be the result of his "accepting bribes, gifts, or some other personal favors related to the judicial office."

To the extent that these allegations relate directly to the merits of the magistrate judge's decision to cancel the hearing, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of improper *ex parte* communication and acceptance of bribes, gifts or favors are insufficient to support a finding of judicial misconduct 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.

This is complainant's third judicial misconduct complaint to be dismissed as merits-related, frivolous or conclusory. Complainant is WARNED that should he file a further merits-related, frivolous or conclusory complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules For Judicial-Conduct or Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.



Carl E. Stewart

Chief Judge

October 11, 2017

U. S. COURT OF APPEALS  
**FILED**

DEC 08 2017

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

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No. 05-17-90075  
Petition for Review by [REDACTED]  
of the Final Order Filed October 17, 2017  
Dismissing Judicial Misconduct Complaint Against  
[REDACTED]  
Under the Judicial Improvements Act of 2002.

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ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Stewart, filed October 17, 2017, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

December 7, 2017  
Date

Priscilla R. Owen  
Priscilla R. Owen  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit