

OCT 25 2017

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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Docket Number: 05-17-90123

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M E M O R A N D U M

Complainant, a state prisoner, has filed a rambling, barely intelligible, judicial misconduct complaint against the subject United States Magistrate Judge regarding two proceedings.

**2015 proceeding**

Complainant complains that despite providing ample support for his numerous motions for appointment of counsel (e.g., advising the court “my IQ is 77,” and advising the court that an attorney would be able to obtain “a really worthy piece of evidence” Barnes had been unable to obtain from a university legal clinic), the magistrate judge denied the motions. He further protests that although the magistrate judge said the court would reconsider his request for counsel later in the proceedings, no further consideration was given. Complainant also complains that he “begged” the magistrate judge to obtain from prison officials “important evidences regarding a criminal act that [took] place on prison grounds,” but because the magistrate judge “would inform me of nothing ... I don't believe [he] even bothered not to [sic] request [that the defendants] turn over the records.” Complainant then complains that the magistrate judge accepted as “professional evidence” the statement of a prison official who “wasn't a doctor nor experienced to conduct an rape examine [sic].”

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

In addition, complainant complains that the magistrate judge intentionally delayed ruling on, and then denied, his repeated motions for protective custody. A review of the docket shows that between March 2015 and October 2015, complainant filed four formal motions for protective custody and/or transfer to another prison unit, and at least five letters

or notices asking the court for the same relief. Discounting two months in which the case was administratively closed after complainant filed a notice of appeal, the magistrate judge ruled on the four formal motions within eight months after the first such motion was filed.

Complainant's conclusory assertion that the eight-month delay in rendering a decision—which, in and of itself, is not evidence of misconduct—was deliberate is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the magistrate judge acted entirely properly in not ruling on informal requests for relief, and this aspect of the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further asserts, erroneously, that the magistrate judge initially found the defendants “guilty” and denied their motion for summary judgment, but then “suddenly” granted the summary judgment motion in retaliation for complainant's “start[in]g to complain against him” and “more likely due to me telling him if I escape and get caught I will tell on public TV the reason for my escape was due not to not only prison officials didn't want to give me protective custody but [neither did the magistrate judge].”

A review of the record demonstrates that complainant has misinterpreted the initial order denying summary judgment. Regardless, to the extent that the 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 a conclusory assertion of retaliatory conduct is insufficient to support a finding of judicial misconduct and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further protests that the magistrate judge “slanders me by saying I asked for [\$5000.00] and I never said that.”

A review of the record shows that complainant explicitly asked for \$5000.00 compensation in the motion to which the magistrate judge referred in support of the statement in the relevant order. The allegation is subject to dismissal as merits-related and frivolous under 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

Complainant also claims that the magistrate judge failed to ask him to clarify his claims, and “then turn[ed] my true testimony to his own made up communication in order to

not only pleasure his call to rule in favor of prison officials but to hide the proofs against officials so they can't face criminal punishment.”

To the extent that the 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 a conclusory assertion of intentional bias is insufficient to support a finding of judicial misconduct and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further protests that despite his filing notices of change of address, “mailings kept being forwarded to wrong institution. [The magistrate] judge pay[s] no attentions to me and in my cry out for help the court is trying to cause me injury to my procedures.”

Complainant appears to be referring to orders entered on February 6, 2017, that the clerk mailed to him at a particular prison unit, but which were returned as undeliverable. According to the docket, complainant's first notice that he had been moved to another prison unit was post-marked February 24, 2017. As such, the contention that the magistrate judge (or the Clerk, who is responsible for entering changes of address) intentionally ignored the change of address to deprive complainant of due process is entirely frivolous, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

### **2017 proceeding**

Without providing any evidence in support of the contention, complainant appears to allege that the magistrate judge engineered the preliminary referral of the 2017 case to himself in order to “sabotage another” of complainant's cases and thereby deprive him of due process. He further asserts that the magistrate judge “and the clerk won't allow me to appeal nor remove my cases from that court location” because complainant failed to accurately designate “which civil courts can or can't take possession of the case. That is not my knowing!” Complainant appears to also claim that the magistrate judge has intentionally misconstrued his claims. “[The magistrate judge] further puts his own communication at which he claims it's what made known to the court. Not one correspondences I ever sent in to the court don't proclaim not one of [the magistrate judge's] fabricated tales he say I made.”

To the extent that the 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 interfering with the court's preliminary referral of cases and intentional denial of due process 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).


### **Conclusion**

Complainant concludes that the magistrate judge's conduct and adverse rulings in the two proceedings demonstrate discrimination against him because he is a *pro se* litigant, anger at complainant for "honestly [telling] him it seem[s] as if he isn't trying to help me," "racist bias," and "the possibility is that him to had [sic] ill-feelings towards me as well ... due to me being imprisoned for child sex case."

Such conclusory assertions of racism and 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

October 23, 2017