

JAN 10 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-18-90043 through 05-18-90045

M E M O R A N D U M

Complainant, a defendant in a federal misdemeanor case, complains that United States Magistrate Judge A deprived him of due process during a December 2017 hearing. For example, complainant alleges that the magistrate judge:

- erroneously “directed to me that the proceeding was under Federal Rules of Criminal Procedure” and “also noticed that 6 months imprisonment was a possibility of the charge upon conviction if I chose to go to trial and lose”;
- failed to conduct a probable cause hearing and “wantonly and recklessly abandoned ... other criminal procedures required to initiate prosecution in ‘immediate breaches of the peace’ violations process”;
- failed to “state essential findings on the record” in response to his seeking an “explanation from the court verbally voiced as a clear objection citing Rule 58 as a self-identifying fine-only process for petty offenses as a foreseeable standard of law consistent with similar municipal courts”;
- “forced [me] to accept [a plea agreement] based upon ... an unlawful threat of possible sentence of imprisonment”;
- “refused to agree to a lesser sentence criteria to obtain the truth of the matter”;
- denied complainant’s discovery requests; and,
- “was enjoying her role as prosecutor and judge rather than that of the impartial and neutral fact finder ... [and] stated rather emotionally “this is a federal matter.”

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 a conclusory assertion of 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 alleges that Magistrate Judge A “was personally insulting towards me with specific words and insults directed at my person for the Motion to Dismiss content and arguments.” A review of the hearing transcript shows that complainant argued repeatedly, and at length, that the court was misapplying the law, and the magistrate judge made some comments that suggest mild exasperation at complainant’s insistence that his arguments were correct. However, there is nothing in the transcript to support complainant’s accusation that the magistrate judge “insulted” him.

In Liteky v. U.S., 510 U.S. 540, 555-556 (1994), the U.S. Supreme Court held that judicial bias is not established by a judge’s “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.” The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also protests that Magistrate Judge A retaliated against him by granting the government’s motion to dismiss the violation notice with prejudice. He submits that the order “did not reach far enough to be properly considered enough of a correction to warrant it as meaningful correction of judicial error. A refund of the moneys of \$125 paid by [me] to secure dismissal is warranted ...”

To the extent that the allegation relates directly to the merits of the magistrate judge’s decision, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of retaliatory motive 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 addition, complainant asserts that Magistrate Judge A and United States Magistrate Judge B failed to exercise “regular due diligent duty to familiarize [themselves] with the canon of magistrate rule 58 fine only duties prior to judicial proceedings,” and failed to grant his motion to dismiss.

The allegation relates directly to the merits of the magistrate judges’ decisions, and is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant claims that he “initiated a prior complaint regarding Veterans fair trial rights” in the relevant division of the United States District Court, and “gave timely prior notice of my concerns of expectation of procedural errors in VA Violation Notice proceedings before those experienced [during the December 2017 hearing].” He complains that the subject United States District Judge took “no action ... to ensure compliance,” and that by violating her “oath to the Constitution of the United States,” the judge “engaged in [an act] of treason.”

The allegation relates directly to the merits of the chief judge’s implied decision not to take action on complainant’s “prior complaint ... seeking waiver of 28 U.S.C. [§] 351 filing requirements,” and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

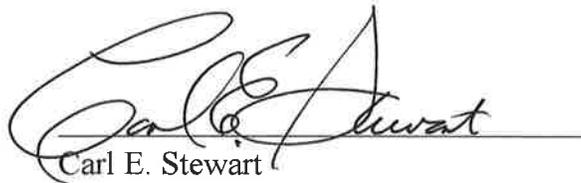
Complainant further appears to allege that as the supervisor of Magistrate Judges A and B, the chief district judge is responsible for their purported lack of familiarity with their “pre-trial” duties regarding “petty offenses for which no sentence of imprisonment will be imposed.”

The allegation is 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.

Based on his merits-related, conclusory, and frivolous allegations about the rulings made and procedures followed in his federal misdemeanor proceeding, complainant requests that the undersigned conduct an investigation into a purported “criminal conspiracy” between judges and prosecutors in such matters in the relevant division of the United States District Court, and order that changes be made to the district court’s local rules. The requests are DENIED.

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge

Date January 7, 2019