

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JUN 27 2019

FIFTH CIRCUIT
MELBA GAYCE, CLERK

Docket Number: 05-19-90106

MEMORANDUM

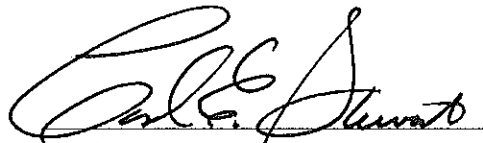
Complainant, a state prisoner, complains that the subject United States Magistrate Judge “is seemingly biased or prejudiced against [me]” in a prisoner civil rights lawsuit. For example, complainant alleges that the magistrate judge:

- “refused to acknowledge Exhibit A” filed in support of complainant’s motion for summary judgment, “which resulted in prejudice ... in the summary judgment proceeding wherein the defendants did not include a defense for this part of the suit”;
- “allowed the defendants to deviate numerous times from the Court’s scheduling order, even without a motion or order granting defendants to do so, which included the court not requiring the defendants to answer [my] motion for summary judgment, despite [my] moving the Court for an order prompting them to do so”;
- mischaracterized complainant’s objections to the defendants’ motion for summary judgment as a “response” to that motion, ignored complainant’s notice that the objections were “not to be misconstrued as [my] response,” and “[l]ater when [I] sought an extension of time to file [my] response, the [magistrate judge] stated that [my] motion was denied because [I] had already filed two responses”; and,
- entered a report recommending that the court grant partial summary judgment to the defendants “without consideration of [my] response” and “even before my response was due.”

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, any assertion of bias or prejudice appears entirely derivative of the merits-related charge, but to the extent the allegation is separate, it is wholly unsupported, and 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.

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge

June 23, 2019