

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90016

U. S. COURT OF APPEALS
FILED

NOV 15 2019

FIFTH CIRCUIT
LYLE W. GAYNE, CLERK

M E M O R A N D U M

Complainant, a state prisoner, alleges that the subject United States Magistrate Judge erroneously recommended that complainant's original 42 U.S.C. § 1983 complaint should be dismissed as frivolous.

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

Complainant further asserts that the magistrate judge intentionally delayed screening his amended 42 U.S.C. § 1983 complaint filed, with leave of the court, after final judgment was entered. At the time the instant complaint was submitted, the amended complaint had been pending for 12 months. When the delay was brought to the magistrate judge's attention, he reviewed the docket in the closed case and promptly entered an order explaining that he had erroneously granted complainant leave to file the amended complaint after final judgment had been entered. The magistrate judge vacated the order granting leave to file and ordered that the amended complaint be stricken from the record.

Complainant's conclusory assertion that the magistrate judge intentionally delayed screening the amended complaint 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).

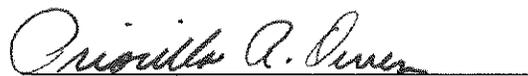
Complainant further alleges that the magistrate judge's recent order vacating leave to file and striking the amended complaint from the record:

contains “several discrepancies”; violates FED. R. CIV. P. 15(a); is “cruel”; “attempt[s] to destroy crucial evidence in this case;” and “should cue you to the fact that there is something inherently wrong with this judge’s behavior.”

To the extent that these allegations relate directly to the merits of the magistrate judge’s rulings or procedural decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations of prejudicial and “inherently wrong” conduct appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

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.



Priscilla R. Owen

Chief United States Circuit Judge

NOVEMBER 13, 2019