

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS  
**FILED**  
NOV 02 2016  
FIFTH CIRCUIT  
LYLE W. GAYCE, CLERK

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Complaint Number: 05-16-90117

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MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Magistrate Judge engaged in *ex parte* communications with the defendants in complainant's prisoner civil rights action. In support of this allegation, he asserts that: only the defendants received a copy of the "order"—actually a docket entry, not a formal order—referring the case to the magistrate judge and the "Order to Answer and Scheduling Order"; and, the magistrate judge recommended denial of his motion for default judgment before he received the defendants' motion for an extension of time to file an answer to his claims.

The conduct described does not constitute *ex parte* communication between the magistrate judge and the defendants, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the magistrate judge erroneously and improperly recommended that his motion for default judgment be denied because the complaint was served on the state Attorney General, not on the defendants. He submits that this "false claim" amounted to the magistrate judge's "raising a defense" that the defendants did not raise in their motion for an extension of time to answer.

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

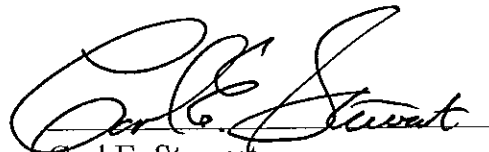
Complainant also complains that the magistrate judge has intentionally delayed ruling on various motions he has filed since March 2016, including motions aimed at the defendants' purported failure to comply with court orders, and motions to transfer the

case and for a temporary restraining order. He contends that the magistrate judge's inaction "is designed to place the defendants in an advantageous position in the case."

Such conclusory assertions of intentional delay and bias are insufficient to support a finding of judicial misconduct, and are therefore also 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

August 16, 2016