

AUG 09 2017

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-17-90060 and 05-17-90061

MEMORANDUM

Complainant, a state prisoner, has filed a barely intelligible judicial misconduct complaint against the subject United States District Judge and the subject United States Magistrate Judge regarding a pending civil rights action in which complainant was, until recently, represented by counsel.

Complainant reports that the judge “scheduled a conference call” and asserts that “it is against Federal and State Law to conduct a conference call on the pretense of arranging Court Matter’s [sic]/Court Dates.”

A review of the docket indicates that the judge did not set the conference call in question, and the allegation against her is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). The undersigned notes that even if the judge had set the conference call, any allegation that it was erroneous to do so would be subject to dismissal as merits-related under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant appears to further allege that “had [the judge] been knowledgably [sic] of Federal and State Law she would not have allowed” one of the defendants to file a motion to dismiss pursuant to FRCP 12(B)(5) or in the alternative, pursuant to Rule 12(B)(6). He complains that he “informed [the judge] of this in writing and typing ... and have heard nothing from anyone.” The undersigned notes that in a docketed *pro se* letter complaining that he has not received any court documents, complainant states that he “also contacted [the judge] via the mailing through the United States Postal Service and have neither [sic] heard [sic] any correspondence from her.”

To the extent, if any, that these allegations relate directly to the merits of the judge’s denial of the defendant’s motion on grounds other than those raised in complainant’s purported correspondence, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In other respects, given that any *pro se* correspondence addressed directly to the judge would likely constitute impermissible *ex parte* communication, the judge's lack of response is entirely proper, and the allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also asserts that because the judge and the magistrate judge are ignorant of federal law, they permitted the following purportedly prohibited acts: filing of complainant's attorneys' motion to withdraw; allowing defense counsel's email addresses to "be incorporated into my civil suit"; assigning of a case number; and, captioning the case as having been filed against [REDACTED] (a defendant named explicitly by complainant throughout his 42 U.S.C. 1983 § complaint). He further submits that the magistrate judge's ignorance of the law in permitting his lawsuit to be filed "upon the receipt/receive/ receiving of someone else's label" renders her "uncontemporary/unfit for my civil hearing."

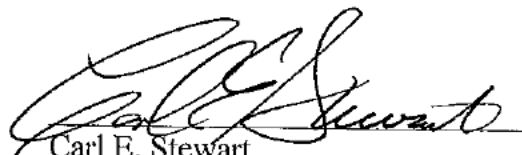
To the extent that these allegations relate directly to the merits of the judge's and the magistrate judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegations are patently frivolous and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant complains that his lawsuit "has been going on for almost a year and a half."

A review of the record demonstrates that other than delay caused by complainant's failure to properly effect service on one of the defendants, the case has proceeded normally. There is simply no evidence of undue delay, and the allegation is 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

July 29, 2017