

FILED

April 13, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90082

MEMORANDUM

Complainant, a state federal prisoner, has filed a complaint alleging that the subject United States Magistrate Judge “has willfully and deliberately been bias[ed] and retaliated against me,” and “has abused and exceeded his authority to protect the defendants” in the underlying civil proceeding.

Complainant submits that the magistrate judge “consciously ignored the fact that [I] invoked this court’s jurisdiction under § 1985, as well as § 1983 in [my] original complaint,” and “disregarded” his claims that defense counsel and state and parish officials “acted in concert” to deny his constitutional rights in the state criminal trial proceeding.

Complainant further asserts that the magistrate judge violated 28 U.S.C. § 636(b)(1)(A) by denying two motions for injunctive relief. A review of the record indicates that the magistrate judge determined that complainant was not seeking injunctive relief, i.e., construing the first motion as seeking a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, and construing the second motion as seeking a “retraction” of a prior court order and removal of the magistrate judge from the closed case.

Complainant also alleges that in an October 2019 order, the magistrate judge “knowingly lied” by stating that complainant had named the same defendants in his amended complaint as he did in his original complaint, whereas complainant notes that he named two additional defendants. He

submits that the magistrate judge “pointedly *pigeonholed* [the amended complaint] in an attempt to protect the defendants.”

In addition, complainant asserts that the magistrate judge “kn[ew] he did not have valid cause to recommend the dismissal of [the amended complaint]” but, upon learning that complainant had filed a judicial misconduct complaint against him, the magistrate judge retaliated by issuing the October 2019 order vacating leave to amend the complaint. A review of the record indicates that the magistrate judge explained that he had erroneously granted complainant leave to file the amended complaint after the court had entered a judgment of dismissal, i.e., the motion should have been denied as moot. Complainant is correct that the magistrate judge became aware of the error after being notified that complainant had filed a complaint alleging undue delay in ruling on the pending amended complaint, but the conclusion that the October 2019 ruling must have been “retaliatory” because there was “no valid cause” to recommend dismissal of the erroneously filed amended complaint is baseless.

Complainant further complains that the magistrate judge improperly ruled on a July 2020 motion which “contained all the allegations of his misconduct,” and the order stated erroneously that complainant had filed three motions to amend his complaint.

To the extent that these allegations relate directly to the merits of 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 bias in favor of the defendants and retaliation against complainant for participating in the judicial complaint process appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.”

To the extent that complainant repeats his prior allegations that the magistrate judge intentionally delayed screening the amended complaint and violated FED. R. CIV. P. 15(a) by denying complainant the right to file an amended complaint, those allegations are subject to dismissal as frivolous 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.

This is complainant's second merits-related and conclusory judicial misconduct complaint against the magistrate judge regarding the same proceeding, and he has abused the complaint process by filing repetitious allegations. Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

April 11, 2021