

FILED

April 13, 2021

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-21-90090

MEMORANDUM

Complainant, a pro se litigant, alleges that in an August 2019 scheduling order (which was vacated on the same date), the subject United States Magistrate Judge [hereafter “Magistrate Judge A”] erroneously stated that a federal defendant had filed “a certified copy of the transcript of the administrative proceeding.” A review of the record indicates that complainant is correct that no such transcript had been filed, but he offers no evidence that the error caused him to suffer any prejudice or was otherwise improper.

Complainant further complains that immediately upon granting the parties’ joint motion for a settlement conference, Magistrate Judge A “accept[ed] the mediator’s role in the case” and “began to dismiss the federal government defendants . . . and [dismissed] the mediation that was originally ordered [as to the federal defendants].” As the record clearly shows, the magistrate judge’s order granting the joint motion for a settlement conference explicitly stated that “this case will be referred to a U.S. Magistrate Judge for a settlement conference” and, in an August 2020 order denying complainant’s motion for recusal, Magistrate Judge A again explained that settlement conferences are not typically conducted by the magistrate judge who is assigned to the case and another magistrate judge would conduct the conference. Magistrate Judge A recommended that the

court grant the federal defendants' motion to dismiss, but it was the presiding United States District Judge who made the final decision and thereby "dismissed" those defendants from any future settlement conference.

Complainant also asserts that "as a direct result of" his filing a motion to recuse Magistrate Judge A, "the district court transferred the settlement mediation to [United States Magistrate Judge B]" and Magistrate Judge A retaliated by "fil[ing] a document in the court record stating that the appeal is being taken in bad faith." However, the record shows it was Magistrate Judge A, following the standard procedure outlined in her prior orders, who transferred the settlement conference to Magistrate Judge B. It appears that the "retaliatory" order at issue is Magistrate Judge A's recommendation that the court should deny complainant's motion to proceed in forma pauperis on appeal because "the appeal is not taken in good faith."

In addition, complainant complains that Magistrate Judge A "has refused to issue orders or directions concerning non-government defendants. . . . In some cases, more than 6 months have elapsed to which [sic] no ruling or indication on the motion(s) has been given." He provides no further information in support of this allegation, but a review of the docket shows that the magistrate judge has considered all motions in a timely manner.

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). To the extent that complainant is alleging undue delay in ruling on his motions, the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations of bias and retaliation 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

April 11, 2021