

Judicial Council for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 4, 2022

Lyle W. Cayce
Clerk

Complaint Numbers: 05-22-90042 and 05-22-90043

MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge and United States Magistrate Judge in a pending civil proceeding.

Complainant, who filed his lawsuit in November 2020, recounts that several times during the case, in accordance with the magistrate judge's "specific protocols to reduce the amount of time it took to get motions and special requests heard," he called "chambers [to] make the request before I submitted it in writing to the clerk." Complainant states that the magistrate judge's previous law clerk was responsive to these requests, whereas, starting in August 2021, a new law clerk instructed complainant "to submit [his unopposed motions] in writing and mail [them], which delayed things." He further reports that the law clerk made "personal, unethical, and uncalled for" remarks exhibiting bias against pro se litigants. Complainant claims that the law clerk "impeded [and] caused irreparable damage to the case and its integrity" through his unprofessional behavior and negative "personal opinions concerning pro se plaintiffs."

Complainant alleges that, "through his law clerk," the magistrate judge "essentially tanked my case and there is bias and miscarriage of justice." He appears to further assert that the magistrate judge should have

recused sua sponte for “conflict of interest” in response to complainant’s filing a recusal motion describing the law clerk’s (purportedly) improper and biased conduct. Complainant also complains that the judge erroneously denied the recusal motion.

In addition, complainant appears to complain that the judge unduly delayed ruling on the motion to recuse, and that the magistrate judge unduly and prejudicially delayed ruling on his motion to appoint a court reporter. He protests that “these delays and tactics will force me to settle this case and puts [sic] me at a great disadvantage.”

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of bias appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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.”

Pursuant to Rule 4(b)(2) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the judge’s six-week delay in ruling on the recusal motion is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay.” As complainant does not allege the former, and there is no evidence of the latter, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

With respect to the magistrate judge’s six-week delay in ruling on the motion to appoint a court reporter (a ruling entered immediately after the judge denied the recusal motion), such a conclusory assertion of improper motive is insufficient to support a finding of judicial misconduct and 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.



Priscilla R. Owen
Chief United States Circuit Judge

February 2, 2022