

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APR 14 2016

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Docket Numbers: 05-16-90057 through 05-16-90059

MEMORANDUM

Complainant, a federal detainee, alleges that orders issued by United States Magistrate Judge A and United States Magistrate Judge B were improper because they were based on a “counterfeit” criminal complaint. He further contends that Magistrate Judge A held a “secret probable cause hearing” disguised as a detention hearing and committed perjury by knowingly making several false statements in the detention order.

These allegations relate directly to the merits of the magistrate judges’ decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Without presenting any evidence in support of the assertion, complainant also claims that Magistrate Judge A appointed a personal friend as defense counsel “with the sole purpose of keeping me buried in jail with no defense.”

Such a conclusory allegation is insufficient to support a finding of judicial misconduct, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant asserts that Magistrate Judge A “assigned the case” to the subject United States District Judge, “his friend of 20 years”. He further claims that during a mental competency hearing, when he informed the subject United States District Judge “of everything that happened” (including Magistrate Judge A’s alleged perjury), the judge “became furious with me.” In a pending motion to recuse, complainant recounts

that the judge “voluntarily stated he has known [Magistrate Judge A] for 20 years”. In the instant complaint, complainant interprets the judge’s statement in defense of Magistrate Judge A’s integrity as an admission of a close, long-term friendship such that the judge could not possibly be impartial when faced with complainant’s claims against his friend.


If, as seems most likely, the judge was simply referring to a long-term professional relationship with Magistrate Judge A, complainant’s contention that this gives rise to a conflict of interest is untenable. If judicial officers were required to disqualify themselves in all matters in which a long-term colleague was presiding judge or magistrate judge, the courts would grind to a halt. Even if the judge and the magistrate judge have a personal friendship outside the court, complainant provides no evidence in support of his conclusion that the judge dismissed out of loyalty, rather than lack of merit, complainant’s claim that the magistrate judge committed perjury. Such conclusory allegations are insufficient to support a finding of judicial misconduct, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant is complaining about the judge’s becoming “furious with” him, the Supreme Court of the United States has held that “[t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant ... But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings” Liteky v. United States, 510 U.S. 540, 551 (1994). The allegation is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant appears to allege that because the judge was affronted by his allegations against Magistrate Judge A, he retaliated by denying complainant’s oral motion to represent himself, granting defense counsel’s motion to determine complainant’s mental competency, ordering complainant be detained in a federal facility where his competency will be evaluated, and ordering that “my jury trial be cancelled ... denying me my constitutional rights to a jury trial.”

To the extent that these allegations relate directly to the merits of the judge's decisions, they are subject to dismissal as merits-related under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory allegations are 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

March 23, 2016