

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

**FILED**

JAN 16 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

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Docket Number: 05-18-90088

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MEMORANDUM

Complainant, a state prisoner, alleges that the subject United States Magistrate Judge engaged in ex parte communication, via email, with defense counsel in a civil proceeding. The communication at issue was a September 8, 2017 letter notifying the court that because the defendant did not intend to reply to complainant's response in opposition to the defendant's August 30, 2017 motion for an extension of time to answer complainant's claims, the motion was ripe for the court's consideration.

Complainant's confirmation that defense counsel simultaneously mailed a copy of the letter to him clearly contradicts his contention that the letter was an ex parte communication, and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant's further assertions that the magistrate judge treated the September 8 letter as "a postdeadline motion," and that complainant was prejudiced by the magistrate judge's improperly and intentionally granting the purported motion before complainant received a copy of it, appear nonsensical. The order explicitly stated that the magistrate judge was granting the defendant's August 30 motion.

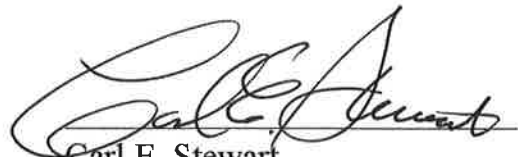
To the extent that these allegations relate directly to the merits of the magistrate judge's decision, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such a conclusory assertion of improper motive or bias is insufficient to

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.

January 12, 2018

  
Carl E. Stewart  
Chief Judge

MAR 15 2019

FIFTH CIRCUIT  
LYLE W. CAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL  
OF THE FIFTH CIRCUIT

No. 05-18-90088

Petition for Review by [REDACTED]  
of the Final Order Filed January 16, 2019,  
Dismissing Judicial Misconduct Complaint

Against [REDACTED]  
Under the Judicial Improvements Act of 2002.

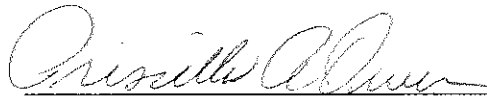
ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Carl E. Stewart, filed January 16, 2019, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

**AFFIRMED.**

3-13-2019  
Date

  
Priscilla R. Owen  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit