

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

OCT 08 2019

Complaint Numbers: 05-19-90148 and 05-19-90149

FIFTH CIRCUIT
LYLE W. GAYGE, CLERK

M E M O R A N D U M

Complainant, a state prisoner, complains that the subject United States District Judge and United States Magistrate Judge “refused to do their duty” and order service of summonses on the defendants in pending civil right lawsuit filed by a fellow prisoner [“Prisoner A”]. Complainant posits that this failure to order service shows that the district judge and the magistrate judge “must suffer from mental illness and committing [sic] judicial misconduct.”

However, a review of the district court docket shows on August 20, 2019 the magistrate granted Prisoner A’s “Motion to Order United States Marshall [sic] Service” (docketed July 19, 2019), instructed him to complete the requisite forms and pay the applicable fees, and ordered the United States Marshals Service, upon receipt of those forms and fees, to serve the defendants.

To the extent that complainant is alleging undue delay in ruling on Prisoner A’s motion, a delay of one month in rendering a decision or procedural ruling is not evidence of judicial misconduct, and the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). See Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings. In other respects, the conclusory allegation of “mental illness” is insufficient to support a finding of mental disability and is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

The undersigned notes that this is the second complaint filed in seven days by state prisoners alleging judicial misconduct and mental disability in cases filed by Prisoner A. Under Rule 23(b)(1), complaint proceedings are confidential and must not be publicly disclosed except “when necessary or appropriate to maintain public confidence in the judiciary’s ability to redress misconduct or disability.” The undersigned finds that abuse of the complaint procedure is such an exception and warrants disclosure of Prisoner A’s complaint history.

Between 2000 and 2009, Prisoner A filed four complaints, in three of which he alleged that judicial officers who issued adverse rulings in his cases suffered from “mental disability” or “brain damage.” In an order entered in August 2009, then-Chief Judge Edith H. Jones suspended Prisoner A’s right to file further complaints, a decision affirmed by the Judicial Council in an order entered in September 2009.

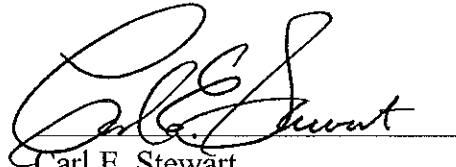
The following factors indicate that Prisoner A is attempting to circumvent the bar order by orchestrating the filing of complaints about his cases by his fellow prisoners:

- Prisoner A and the two prisoner-complainants are housed in the same section of the prison.
- Each prisoner-complainant states he has read Prisoner A’s pleadings and the courts’ orders in the relevant case.
- In an “emergency judicial notice” docketed on August 1, 2019 in the district court proceeding underlying the other recent complaint, Prisoner A threatened “to file a complaint to ... 5th Circuit Chief Judge for an investigation” of the court’s delay in ordering service on the defendants.
- The exhibits filed in support of the instant complaint include the original district court receipt for Prisoner A’s payment of the filing fee.
- The allegations of mental illness/defect made by the prisoner-complainants are strikingly similar to those made by Prisoner A.

Prisoner A’s attempt to circumvent the bar order is an abuse of the complaint process and, pursuant to Rule 10(b), I recommend that the judicial council issue an order instructing the clerk to refuse to accept additional orchestrated complaints regarding Prisoner A’s cases.

An order dismissing the complaint is entered simultaneously herewith.

September 30, 2019


Carl E. Stewart
Chief Judge