

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

MAR 09 2016

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Docket Number: 05-16-90046

MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject United States District Judge. He complains that the judge's adverse rulings in two prisoner civil rights proceedings demonstrate prejudice, conspiracy, refusal to admit the truth of a statement, manipulation of the system, harassment, retaliation, and were harmful to complainant's physical and mental health. For example:

- The judge concluded that because complainant's initial application to proceed *in forma pauperis* had already been granted in the first case, a further IFP application should be removed and filed in the second case in which complainant had not yet filed an IFP application. Without providing any explanation, complainant asserts that the judge's decision "caused a big problem ... all that did was help the defendant".
- In the first case, the judge ordered that the defendants' original answer be unfiled because it was not signed by an individual attorney. Defense counsel then filed a notice of appearance and an answer to the complaint signed by that attorney. Without providing any explanation, complainant appears to allege that these events prejudiced his then-pending motion for a restraining order.
- In both cases, the judge denied all of complainant's motions "for help ... but granted the defendants' [motions]".
- The judge improperly ruled on complainant's motion for his "removal".

To the extent that the allegations relate directly to the merits of the judge's decisions, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, such conclusory assertions of bias and conspiracy are insufficient to support a finding of judicial misconduct and are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that various orders and other correspondence sent to him by the court were returned as undeliverable, and he protests that "they knew where I was all the time". It is not clear whether complainant is claiming the court intentionally sent documents to an incorrect address, or the jail administration intentionally failed to forward the court's mail when he was temporarily relocated to another facility.

Regardless, to the extent that this allegation might be construed as being aimed at the judge, it is the clerk's responsibility to process case-related correspondence for the court, and the allegation is therefore subject to dismissal as frivolous 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

February 16, 2016