

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
NOV 02 2016
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Complaint Number: 05-16-90115

MEMORANDUM

Complainant, a state prisoner, complains that the subject United States District Judge failed to take judicial action in complainant's prisoner civil rights action for five months after it was removed from state court to federal court.

Pursuant to Rule 3(h)(3)(B) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable misconduct "unless the allegation concerns an improper motive or habitual delay." As complainant provides no evidence of the former, and does not allege the latter, the allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant states that he wrote a "letter of complaint" asking the "Chief Justice" of the district court to address the issue of undue delay. He protests that he received no response, other than the subject judge's order dismissing the case shortly after the letter was docketed.

A review of the docket indicates that the letter, which was captioned for filing in the district court proceeding, and was docketed by the Clerk as a "notice to the Court to request action on Plaintiff's previously filed pleadings." The undersigned notes that it would be entirely proper for a Chief Judge not to respond to *ex parte* communication from a litigant, let alone intervene in pending litigation.

Regardless, complainant presents no evidence to support his conclusory assertion that the subject judge dismissed his lawsuit in retaliation for his writing the "letter of

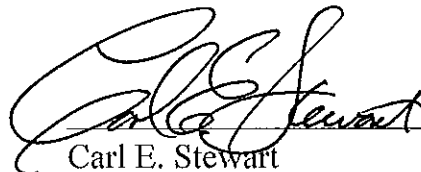
complaint,” and the allegation is therefore also subject to dismissal under 28 U.S.C. § 352 (b)(1)(A)(iii).

Complainant also complains that despite his filing “pleadings clearly alleg[ing] that [I] am under imminent serious medical injury,” the judge denied complainant’s due process rights by erroneously and prejudicially dismissing the lawsuit under 28 U.S.C. § 1915(g). In addition, he protests that the judge abused his discretion by holding that complainant could not proceed *in forma pauperis* in a case where the defendants had already paid the filing fee, but could re-file his claims as a new case with payment of the full filing fee. Complainant accuses the judge of attempting to “extort” a \$400 filing fee from him.

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 retaliation and bias 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).

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

September 26 2016