

NOV 06 2019

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90008 through 05-20-90010

MEMORANDUM

Complainant, a federal prisoner, alleges judicial misconduct by the three subject United States District Judges in complainant's pending 42 U.S.C. § 1983 proceeding.

Because a review of the record shows that the underlying case was not assigned to Judge C and he entered no rulings, all allegations against him are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant appears to complain that Judge A's decision to construe his 28 U.S.C. § 2241 petition as a 42 U.S.C. § 1983 complaint resulted in "prejudice . . . upon me." The allegation relates directly to the merits of the judge's decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant reports that in January 2019, Judge A granted his motion to proceed *in forma pauperis* and ordered that an initial filing fee be deducted from complainant's inmate trust account by prison officials when the funds became available. Complainant states that the initial filing fee has not been deducted even though there have been sufficient funds in his inmate trust account since January 2019, and despite his efforts to bring the oversight to the attention of the court and district court clerk.

Complainant appears to allege that Judge A failed to transmit a copy of the initial filing fee order to prison officials, however the order explicitly instructed the district court clerk to perform that task, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that Judge A and Judge B—to whom the case was transferred on August 8, 2019—have failed “to ascertain whether [I have] complied with the [filing fee] order.” The allegation relates directly to the merits of the judges’ decisions or procedural rulings and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant also submits that “it would be an abuse of discretion for [Judge B] to dismiss [my] case for failure to comply with an initial partial filing fee order . . . without (first) making sure some inquiry was made.” This entirely speculative allegation is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In addition, complainant complains Judge B has unduly delayed ruling on a Motion for Declaratory Relief filed on August 30, 2019. 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 does not allege the former, and there is no evidence of the latter, 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.

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.



Priscilla R. Owen
Chief United States Circuit Judge

October 28, 2019