

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JAN 08 2016

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Docket Number: 05-16-90003 and 05-16-90004

MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Magistrate Judge denied his motion for appointment of counsel.

The allegation relates directly to the merits of the magistrate judge's decision, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that the subject United States District Judge has not ruled on his motion for reconsideration of the denial of appointment of counsel, or answered his subsequent letter asking the judge whether he could "appeal" the denial of appointment of counsel.

A review of the docket indicates that the motion for reconsideration was filed 20 days before complainant signed the instant complaint, and the letter—which is not a formal pleading or motion requiring judicial action—was filed 14 days before the instant complaint. Such a minimal delay in ruling on a motion is not evidence of judicial misconduct, and the allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). See Rule 3(h)(3)(B) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

Complainant also complains that the judge and the magistrate judge have not responded to his "continued ... request [that] the court return his evidence to further litigate. Court apparently is showing special treatment and/or special favors to Def. Counsel." He appears to be referring to an August 24, 2015 motion asking the court to

provide, without charge, copies of his pleadings and exhibits for his records, and to correspondence he has written to the judge seeking the same.

Neither a delay of less than six weeks in rendering a decision, nor such a conclusory assertion of bias in favor of defense counsel, is sufficient to support a finding of judicial misconduct, and the allegations are 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.

December 31
October 8, 2015


Carl E. Stewart
Chief Judge

FEB 24 2016

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

BEFORE THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT

No. 05-16-90003 and 05-16-90004
Petition for Review by [REDACTED]
of the Final Order Filed January 8, 2016
Dismissing Judicial Misconduct Complaint Against
[REDACTED] and
[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 8, 2016, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore

AFFIRMED.

February 18, 2016
Date

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