

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCT 17 2017

FIFTH CIRCUIT
LYLE W. GAYCE, CLERK

Docket Number: 05-17-90092

MEMORANDUM

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject United States District Judge regarding three separate civil proceedings.

- **Case 1**

Complainant complains that the judge dismissed the matter with prejudice *sua sponte*, “even declared frivolous.”

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).

- **Case 2**

Complainant complains that the judge dismissed the lawsuit with prejudice after the case “was held up nearly a year without service of process.”

A review of the record shows that the magistrate judge’s initial routine screening of complainant’s claims was performed within three months of his filing the lawsuit, and the second screening was performed within six days of the magistrate judge’s withdrawal of her initial report. In an order granting complainant’s application to proceed *in forma pauperis*, the magistrate judge explained that service of process was being withheld pending judicial screening pursuant to 28 U.S.C. § 1915A.

To the extent that the allegations relate directly to the merits of the judge’s decision, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, given that the judge entered final judgment four months after the magistrate

judge filed her second report, the allegation of undue delay in service of process is entirely frivolous and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further protests that “it’s been 6 months and no ruling on Motion to Alter or Amend the Judgment that releases it to appeal.”

A delay of seven months in ruling on a motion does not constitute 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.

- **Case 3**

Complainant alleges that the judge “allowed [the case] to lay for almost 1yr before finally concluding he didn’t believe the facts and evidence I produced.”

A review of the record shows that the case was transferred to the judge’s docket in July 2016. Complainant filed objections to the magistrate judge’s report in August 2016, and the judge entered final judgment in November 2016.

To the extent that the allegations relate directly to the merits of the judge’s decision, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, complainant’s claim that the judge “allowed [the case] to lay for almost a year” is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further objects that in denying various post-judgment motions, the judge ordered the district court clerk to refuse to file any further documents complainant attempts to file in the case unless he shows that he has been granted leave by the Fifth Circuit.

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).

Additional Allegations

Without providing any evidence in support of the contentions, complainant also asserts that: the judge’s “chief weapon in his all-motions-denied-and-actions-dismissed

campaign is he knows appeals take years”; and the judge “is solidly partial to any state or government official. He deliberately drags cases out... then consistently rules against the citizen seeking relief. The Judge is especially prejudicial to indigent pro se citizens with legitimate claims. The newspaper has to my knowledge never published a story inconsistent with this letter.”

Such conclusory assertions 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

October 11, 2017