

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Complaint Number: 05-18-90003

REVISED MEMORANDUM

The order entered October 30, 2017 dismissing the above-referenced judicial misconduct complaint is vacated, and is replaced by this revised order.

Complainant, a state prisoner, has filed a judicial misconduct complaint against the subject United States District Judge.

In 2015, the judge signed a General Order authorizing the district court clerk's office to provide, without charge, copies of certain documents at the request of *pro se* defendants in criminal cases and *pro se* petitioners in habeas corpus cases. The order further established that such *pro se* requesters may receive one free copy of their docket report and, upon written request, one free update to that report per month if additional documents have been filed in the case.

Complainant appears to allege that by limiting him, a *pro se* requester, to one free copy of a docket report, the judge "violat[ed] my protected civil rights [sic] states [sic] and federal constitutional laws." In support of this claim, complainant cites the judge's failure to respond to his request for a copy of "my civil rights federal lawsuit complaint" in a prisoner civil rights proceeding. A review of the docket indicates that complainant's request was docketed in the civil proceeding, a matter not assigned to the subject judge.

To the extent that complainant asserts that the judge violated his rights by issuing a general order limiting the provision of free copies of certain documents to *pro se* litigants in criminal cases and habeas corpus proceedings, the allegation concerns an administrative rather than a judicial function. While administrative decisions may involve misconduct, complainant must allege more than disagreement with the judge's


decision. The mere issuance of a general order does not constitute judicial misconduct, and complainant has failed to allege improper motive or any other wrongful objective on the judge's part.

This aspect of the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent that complainant complains that the judge failed to respond to his request for a copy of his "civil rights federal lawsuit complaint," it is clear that (a) the General Order does not apply to prisoner civil rights cases, and (b) because the case was assigned to another judge, it was entirely proper for the subject judge not to respond to complainant's *ex parte* communication.

This allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.


Carl E. Stewart
Chief Judge

December 29, 2017