

MAR 12 2020

FIFTH CIRCUIT
LYLE W. GAYCE, CLERKJUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT

Complaint Numbers: 05-20-90049 through 05-20-90051

M E M O R A N D U M

Complainant, a state prisoner, complains that United States District Judge A “issued an arbitrary order to transfer” complainant’s 28 U.S.C. § 2254 proceeding to another district court, and “made no mention” of complainant’s allegations of judicial and attorney misconduct in the underlying state court proceedings.

These allegations relate directly to the merits of Judge A’s decision and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Noting that Judge A “terminate[d] all pending motions” in the order transferring the case, complainant appears to further complain that this amounted to “discard[ing]” his motions. A review of the docket shows that the “terminated” motions were transferred to, and ruled on, by the other district court.

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

Complainant also alleges that Judge A unduly delayed entering the order until “some 2½ months after [I] filed” the § 2254 petition. A review of the docket indicates that the order was entered seven weeks after the petition was docketed.

Regardless, as provided by Rule 4(b)(2) 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

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).

In addition, complainant submits that Judge A and, upon transfer to the other district court, United States District Judge B and the United States Magistrate Judge, violated the state Code of Judicial Conduct by failing to report to the appropriate authorities the purported judicial and attorney misconduct in the underlying state court proceedings.

Federal judges are not subject to the state Code of Judicial Conduct, however Canon 3B(5) of the Code of Conduct for United States Judges provides that “[a] judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge’s conduct contravened this Code or a lawyer violated applicable rules of professional conduct.” To the extent, if any, that Canon 3B(5) might be construed as requiring a federal judge to report judicial or attorney misconduct in state proceedings, this aspect of the complaint relates directly to the merits of the subject judges’ and magistrate judge’s assessment of complainant’s allegations, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

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

March, 2020