

FILED

May 7, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90058

M E M O R A N D U M

Complainant, a state detainee, complains that the subject United States District Judge’s denial of complainant’s application to proceed in forma pauperis [“IFP”], dismissal of his 42 U.S.C. § 1983 action, and imposition of a third strike under 28 U.S.C. § 1915(g) were erroneous, discriminatory, and unlawful, and were the result of the judge’s “failure to “investigate” and “validate” complainant’s claims in a 42 U.S.C. § 1983 matter assigned to another judge.

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of discrimination appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

Complainant seems to further assert that the judge has unduly delayed ruling on his “several letters and more to reinstate the case and let me know the status.” A review of the docket shows that following the dismissal of the case, complainant sent numerous letters and notices to the court, but his only formal motions or pleadings—a further IFP application and an amended complaint—have been pending for less than six weeks.

Regardless, as provided by Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about mere delay in rendering a decision is not evidence of judicial misconduct. The allegation is 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.



Priscilla R. Owen
Chief United States Circuit Judge

May 6, 2020