

FILED

August 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40066
Conference Calendar

DIONEL DE LA CRUZ,

Plaintiff-Appellant,

versus

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, MCALLEN
AND BROWNSVILLE DIVISIONS; US DISTRICT COURT JUDGES RICARDO
HINOJOSA AND FILEMON VELA; US MAGISTRATE JUDGES FELIX RECIO,
DORINA RAMOS, AND PETER ORWENSBY,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-MC-74

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Dionel De La Cruz has filed a motion for leave to proceed in forma pauperis (IFP) on appeal from the district court's order dismissing his civil rights complaint as frivolous, denying IFP, and reiterating its prior injunction barring De La Cruz from filing pleadings without leave of court. De La Cruz contends that his civil and due process rights were violated when Judge Vela dismissed his complaint, because, as a named defendant in the complaint, Judge Vela should have disqualified himself.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

De La Cruz's lawsuit is clearly frivolous and asserts claims against parties which are immune from suit. See FDIC v. Meyer, 510 U.S. 471, 475 (1994); Johnson v. Kegans, 870 F.2d 992, 995-96 (5th Cir. 1989). The better procedure, however, would have been for Judge Vela to have recused himself because he was a named defendant in the proceeding. Accordingly, we vacate the district court's judgment and remand with instruction to refer the matter to another non-defendant district court judge for dismissal.

IFP GRANTED; VACATED and REMANDED with instruction.