

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41020
Conference Calendar

DIONEL DE LA CRUZ,

Plaintiff-Appellant,

versus

TEXAS VISITING NURSE SERVICE, INC.;
ROERIG, OLIVEIRA & FISHER L.L.P.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-MC-11

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Dionel de la Cruz appeals from the district court's order denying him leave to proceed in forma pauperis (IFP). This court considers the district court's order as a dismissal for failure to prosecute or to comply with a court order, because the district court's decision was based on de la Cruz' failure to appear for a hearing. The district court did not abuse its

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

discretion in denying de la Cruz' motion to proceed IFP. See McNeal v. Papasan, 842 F.2d 787, 790 (5th Cir. 1988).

Furthermore, de la Cruz' appeal lacks arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). De la Cruz is cautioned that any future frivolous appeals or pleadings filed by him or on his behalf will invite the imposition of sanctions. He should therefore review any pending appeals to ensure that the appeals do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.