IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4286
Conference Calendar

DONALD GENE HENTHORN,

Plaintiff-Appellant,

versus

J. D. SWINSON ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:89-CV-79

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(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Donald Gene Henthorn filed a Bivens complaint alleging that the defendants pillaged, tampered with, read, and confiscated his pro se legal papers. The district court dismissed his complaint with prejudice and denied his motion to recuse the magistrate judge.

Henthorn argues that the defendants' motion to dismiss, or alternatively motion for summary judgment, filed on October 1, 1992, was untimely. The magistrate judge's August 28, 1992,

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

order required the defendants to file a response to Henthorn's complaint within 30 days of receipt of the order. The defendants were permitted to add three days to the prescribed period because the order was mailed to them. See Fed. R. Civ. P. 6(e). The defendants response was due on October 2, 1992, and it was timely filed on October 1, 1992.

Henthorn also argues that the magistrate judge should have been removed from his case because he was personally biased against Henthorn. This Court reviews the denial of a motion for recusal for an abuse of discretion. United States v. MMR Corp., 954 F.2d 1040, 1044 (5th Cir. 1992) (28 U.S.C. § 144); United States v. Harrelson, 754 F.2d 1153, 1165 (5th Cir.), cert. denied, 474 U.S. 908 (1985) (28 U.S.C. § 455).

To move for recusal under § 144 the movant must attach an affidavit stating with particularity the facts demonstrating the personal bias or prejudice of the judge. United States v. Schoenhoff, 919 F.2d 936, 939 (5th Cir. 1990); 28 U.S.C. § 144. Henthorn did not submit an affidavit to the district court or this Court.

Disqualification under § 455 is appropriate if a "reasonable man, if he were to know all the circumstances, would harbor doubts about the [magistrate] judge's impartiality." Levitt v. University of Texas at El Paso, 847 F.2d 221, 226 (5th Cir.), cert. denied, 488 U.S. 984 (1988) (citations omitted). Generally the alleged bias must arise from extrajudicial sources, although recusal may be required where pervasive bias or prejudice manifests itself only through judicial conduct. MMR Corp., 954

F.2d at 1045. Henthorn made a series of unsubstantiated allegations in the district court and this Court to demonstrate the magistrate judge's bias. However, adverse rulings without more are insufficient to support a recusal motion. See In re Corrugated Container Antitrust Litigation, 752 F.2d 137, 145 (5th Cir.), cert. denied, 473 U.S. 911 (1985). The district court did not abuse its discretion by denying the motion.

To state a cognizable denial-of-access-to-the-courts claim Henthorn must establish that his position was prejudiced by the alleged deprivation. Richardson v. McDonnell, 841 F.2d 120, 122 (5th Cir. 1988). Although Henthorn alleged that the defendants stole two documents, he was able to replace these documents and use them in his pending litigation. He has not stated a cognizable denial-of-access-to-the-courts claim. See Mann v. Smith, 796 F.2d 79, 84 n.5 (5th Cir. 1986).

To the extent Henthorn argues that the defendants pillaged through his legal papers in retaliation for his use of the prison grievance system and the federal courts, he has provided no facts to support his allegations. Conclusional allegations are insufficient to state a cognizable Bivens claim. See Moody v. Baker, 857 F.2d 256, 258 (5th Cir.), cert. denied, 488 U.S. 985 (1988).

AFFIRMED.