

FILED

June 5, 2020

Lyle W. Cayce
Clerk

**JUDICIAL COUNCIL
FOR THE FIFTH CIRCUIT**

Complaint Number: 05-20-90102

M E M O R A N D U M

Complainant, a state prisoner, complains that the subject United States District Judge’s denials of his 28 U.S.C. § 2254 petition and a Certificate of Appealability were based on erroneous characterization of his claims and “serious neglect [of] laws and evidence.” He asserts further that in order to disregard the respondent’s “obvious and clear violations of [my] due process rights,” the judge “ignored” his exhibits, “falsified” the facts, and was “obviously not concerned with the fairness of justice of law when it comes to [a prisoner litigant].”

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 assertions of bias against complainant in particular, and prisoner litigants in general, appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.”

In addition, complainant complains that he “waited for this judge’s final decision nearly two years.” A review of the docket shows that the case proceeded normally until October 2018, and there was an almost 17-month delay before the judge entered final judgment in February 2020.

Pursuant to 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.” To the extent that complainant is alleging intentional delay, the conclusory assertion is insufficient to support a finding of judicial misconduct, and there is no evidence of habitual delay. 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.

This is complainant’s third merits-related complaint, and he has been warned previously against filing further merits-related, conclusory, frivolous, or repetitive complaints. Complainant’s right to file complaints is hereby SUSPENDED pursuant to Rule 10(a), Rules For Judicial-Conduct and Judicial-Disability Proceedings. Complainant may show cause, through a petition for review submitted pursuant to Rule 18, why his right to file further complaints should not be so limited.

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

June 4, 2020