

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3586
Conference Calendar

LEWIS E. JOHNSON

Plaintiff-Appellant,

versus

RICHARD GRAVES,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-1336-A
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, AND DAVIS, Circuit Judges.

PER CURIAM:*

A judge's law clerk is absolutely immune from damage claims arising from actions taken by the law clerk in assisting the judge in carrying out his judicial functions. Mitchell v. McBryde, 944 F.2d 229, 230 (5th Cir. 1991).

Dismissal of a claim that a law clerk interfered with a plaintiff's constitutional rights will not be upheld on review unless it appears with certainty that the non-movant could prove no set of facts that would entitle him to relief. Hobbs v. Hawkins, 968 F.2d 471, 480 (5th Cir. 1992) (citation omitted).

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court may consider the sufficiency of a complaint on its own initiative and dismiss pursuant to Fed. R. Civ. P.

12(b)(6) even though the defendant has not made such a motion.

Guthrie v. Tifco Industries, 941 F.2d 374, 379 (5th Cir. 1991),
cert. denied, 112 S.Ct. 1267 (1992).

Johnson could prove no set of facts that would entitle him to relief. Therefore, the judgment of the district court is
AFFIRMED.