

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JAN 08 2016

Docket Number: 05-16-90001

FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

MEMORANDUM

Complainant, a *pro se* litigant, has filed a judicial misconduct complaint against the subject United States District Judge regarding two civil proceedings, one filed in 2011 and the other filed in 2015. Complainant makes the following allegations:

- **2011 case:** The judge's *sua sponte* review of complainant's claims violated his Seventh Amendment rights, and the dismissal of those claims as untimely-filed was erroneous.
- **2015 case:** The judge violated the Federal Rules of Civil Procedure by "not extend[ing] to [me] the opportunity to make a Motion to Amend Complaint."
- **Both cases:** The judge's dismissal of any pending motions as moot was "a flagrant abuse of discretion", "a violation of acceptable judicial procedure", and "was prejudicial to this *pro se* litigant".

These allegations relate directly to the merits of the judge's decisions, and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant asserts further that in a September 2011 opinion, the judge "condescending[ly]" characterized complainant's misunderstanding of a statutory deadline as the product of "naivetè". He also protests that the judge demonstrated an "appalling" and "denigrating attitude toward this *pro se* litigant" in both matters by referring to complainant's Applications to Proceed in District Court Without Prepaying Fees or Costs as requests "to proceed *in forma pauperis*".

These allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).


Complainant concludes that the judge's rulings in both proceedings demonstrate "a prejudicial/disparaging attitude towards *pro se* litigants" and an "objective ... to dismiss *pro se* litigants' complaints as soon as possible."

Such conclusory assertions of bias are insufficient to support a finding of judicial misconduct, and are therefore also 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.

An order dismissing the complaint is entered simultaneously herewith.

~~December 31~~
~~October 8~~, 2015


Carl E. Stewart
Chief Judge