

United States Court of Appeals for the Federal Circuit

IN RE COMPLAINT NO. FC-22-90019

ORDER AND SUPPORTING MEMORANDUM

The complainant, an inmate, submits a petition to review the June 24, 2022, order dismissing the above-referenced complaint. The envelope for the petition indicates the “Date Mail[ed]” was September 26, 2022. The court received the petition on October 4, 2022.

Rule 18(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings states that “[t]he circuit clerk must refuse to accept a petition that is” not timely “received.” A petition must be received by the circuit executive within 42 days after the date of the order. See Rule 18(b) (stating that “[a] petition for review must be filed in the office of the circuit clerk within 42 days after the date of the chief judge’s order”); Rule 3(b) (explaining that “Circuit Clerk” means the circuit executive of this court). Here, the complainant did not file this petition for review within 42 days of dismissal of the complaint.

A petition will be deemed timely filed if deposited in an “institution’s internal mail system on or before the last day for filing and” it is “accompanied by” a “declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid.” Fed. R. App. P. 25(a)(2)(A)(iii); Rule 18 cmt. But complainant here does

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PETER R. MARKSTEINER
CLERK

not bring himself within coverage of that rule, because he did not submit any affidavit or evidence indicating that the petition was deposited by the deadline.

Accordingly,

IT IS ORDERED THAT:

The petition is refused as untimely.

FOR THE COURT

November 8, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court