

FILED

January 24, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-22-90031

MEMORANDUM

Complainant, a state prisoner, alleges that the subject United States District Judge's undue delay in ordering the defendants to respond to complainant's claims in three 42 U.S.C. § 1983 proceedings constitutes evidence of not only habitual delay, but also of improper motive in affording the defendants opportunities to destroy evidence vital to complainant's claims. However, a review of the dockets indicates that those delays arose out of inaction by the magistrate judges to whom the court referred preliminary matters. Indeed, the only delay attributable to the judge is a five-month delay in issuing a ruling on the magistrate judge's Report and Recommendation in the third case.

A five-month delay in a single proceeding does not constitute evidence of habitual delay, and any assertion of improper motive "lack[s] sufficient evidence to raise an inference that misconduct has occurred." The complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).¹

¹ Even if complainant had identified the two United States Magistrate Judges as subjects of the complaint, delays in three discrete cases are insufficient to support a finding of habitual delay and the conclusory assertion of improper motive "lack[s] sufficient evidence to raise an inference that misconduct has occurred." Any such complaint against Magistrate Judge A would therefore be subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). Magistrate Judge B is retired. As provided by 28 U.S.C. § 351(d)(1) and Rule 1 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, he is no longer subject to the Judicial Improvements Act and therefore any such complaint against him would be concluded under 28 U.S.C. § 352(b)(2).

An order dismissing the complaint is entered simultaneously herewith.



Priscilla R. Owen
Chief United States Circuit Judge

January 11, 2022