

FILED

July 29, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90081 and 05-22-90082

MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States District Judge and the subject United States Magistrate Judge in a pending 42 U.S.C. § 1983 proceeding.

The magistrate judge 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, retired judicial officers are not subject to the Judicial Improvements Act. The complaint against the magistrate judge may therefore be concluded under 28 U.S.C. § 352(b)(2).

Complainant complains that the judge: “supposedly conducted a *de novo* review but somehow failed to notice” that certain findings in the magistrate judge’s Report and Recommendation were erroneous and improper; “claim[ed] to have dismissed [my] claims due to lack of proof even as he denied [me] the right/access to [my] own medical records and request of admissions”; “gave the defendants 40 days to file a third amended motion for summary judgment . . . thus exposing prejudicial favor for the defendants”; and “wrongfully and obviously discriminatorily denied” his application to proceed in forma pauperis on appeal.

In addition, complainant objects that the judge improperly “acted in the capacity of [an] unlicensed medical expert” by adopting certain findings in the magistrate judge’s report, and “called me a liar when mine [sic] and

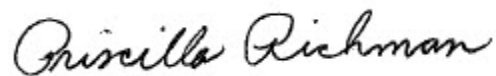
the defendants' evidence proved my assertions and facts as true . . . said to be false only against me while the defendants [were] given chance after chance unsolicitedly [sic].” He concludes that the judge treated him in a demonstrably egregious and hostile manner “by discriminating against [me] because [I am] a black prisoner.”

To the extent that the complaint relates directly to the merits of decisions or procedural rulings, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias and discrimination appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are therefore also 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.”

Finally, complainant complains about “district court” errors in mailing “so-called-sealed legal documents” to him. Clerk’s office personnel, not judicial officers, are responsible for mailing court documents and the allegation is therefore subject to dismissal as frivolous 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.



Priscilla Richman
Chief United States Circuit Judge

July 25, 2022

Before the Judicial Council of the Fifth Circuit

Complaint Numbers: 05-22-90081 and 05-22-90082

Petition for Review by [REDACTED]

of the Final Order Filed July 29, 2022,

Dismissing the Judicial Misconduct Complaint Against

[REDACTED] and
[REDACTED]
[REDACTED]

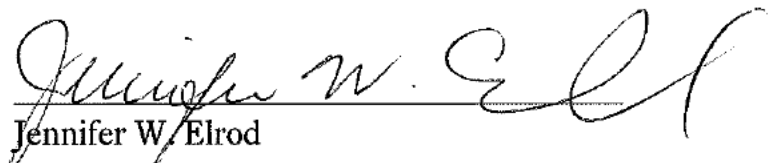
Under the Judicial Improvements Act of 2002.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Priscilla Richman, filed July 29, 2022, dismissing the Complaint of [REDACTED] against [REDACTED] and [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

8/15/2022
Date


Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit