

FILED

November 14, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90099 and 05-22-90100

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge in two civil proceedings, and by the subject United States Magistrate Judge in four other civil proceedings.

Complaint against District Judge

Complainant repeats allegations raised, and dismissed, in a prior misconduct complaint, i.e., that the judge's erroneous and improper decisions construing his claims as 42 U.S.C. § 1983 claims and ordering the deduction of filing fees from complainant's inmate trust account constitute evidence of bias, racism, and retaliation for his filing suit against white prison personnel.

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

Complainant further complains that in the second proceeding, the judge "should have [given] me an open chance to correct the matter" and file an "amended 2254."

The allegation relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complaint against Magistrate Judge

Without distinguishing between the four cases, complainant complains that the magistrate judge has “always”: denied his motions to appoint counsel, motions “for production of documents,” and motions “to have defendant respond to my request for questions”; “forced” complainant “to answer the question[s] that defendants submit”; “overlook[ed] the misconduct that the defendants are doing to me”; and, recommended denial of complainant’s motions for injunctive relief. He further complains that the magistrate judge is “misconducting [sic] by allowing the names in my complaint to be wrong. In which I have spelled right.” Complainant surmises that the magistrate judge “is accepting only the defendants’ sides and is communicating with one side . . . to obstruct justice.”

To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any conclusory assertions of bias and ex parte communication appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported, and are 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.”

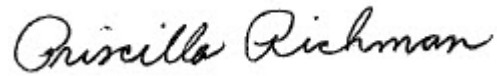
In addition, complainant complains that the cases have been pending for “more than a year . . . [two] years on some claims” and the magistrate judge has yet to order service of process on the defendants. A review of the dockets indicates several delays of more than six months in judicial action and, in one case, two delays of almost twelve months. All four matters now appear to be proceeding normally.

While delays of more than six months in rendering decisions are undesirable, they do not, of themselves, constitute judicial misconduct. There is no evidence to suggest that any delays in judicial action are due to a lack of diligence or an intent to deny complainant access to the court or due process, and this aspect of the complaint is therefore subject to dismissal

under 28 U.S.C. § 352(b)(1)(A)(iii). *See* Rule 4(b)(2), Rules For Judicial-Conduct and Judicial-Disability Proceedings.

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.

A handwritten signature in cursive script that reads "Priscilla Richman".

Priscilla Richman

Chief United States Circuit Judge

November 10, 2022

FILED

January 3, 2023

Lyle W. Cayce
Clerk

**Before the Judicial Council
of the Fifth Circuit**

Complaint Numbers: 05-22-90099 and 05-22-90100

Petition for Review by [REDACTED]
of the Final Order Filed November 14, 2022,
Dismissing the Judicial Misconduct Complaint Against

[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 United States Circuit Judge Priscilla Richman, filed November 14, 2022, dismissing the Complaint of [REDACTED]

against [REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

December 29,
Date 2022

Jennifer W. Elrod
Jennifer W. Elrod

United States Circuit Judge

For the Judicial Council of the Fifth Circuit