

**FILED**

November 14, 2022

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-22-90096

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## MEMORANDUM

Complainant, a pro se litigant (and former state prisoner), has filed a complaint alleging misconduct by the subject United States District Judge in a pending 28 U.S.C. § 2254 proceeding.

Complainant complains that the judge has taken no action in the case since December 2019.

A review of the docket indicates that preliminary matters remain pending before a United States Magistrate Judge. The judge is not responsible for the delay in judicial action, and the allegation against him is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

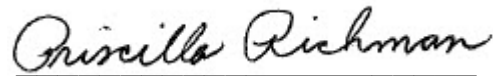
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<sup>1</sup> However, had complainant identified the magistrate judge as being responsible for the undue delay, the allegation would still be subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii). While a delay is always undesirable, a 30-month delay does not, of itself, constitute judicial misconduct. Pursuant to Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay.” Complainant does not allege the former, and there is no evidence of the latter. Furthermore, in response to a limited inquiry made under Rule 11(b) in connection with this complaint, the magistrate judge promptly took judicial action in complainant’s case.

Complainant further complains that the judge “had his clerk inform me not to call and ask” about the status of the pending case. He also appears to complain that in response to complainant’s continued calling “about every other month,” the judge instructed a United States Marshal to “call my parole officer . . . and threaten me for checking on my case.”

There was nothing improper in the judge’s instructing—through chambers staff and, eventually, through the United States Marshals Service—a litigant to cease communicating directly with chambers about a matter that should be raised through formal filings in the pending litigation. This aspect of the complaint is also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

An order dismissing the complaint is entered simultaneously herewith.



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Priscilla Richman

Chief United States Circuit Judge

November 10, 2022