

FILED

March 15, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90114 and 05-22-90115

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge and United States Magistrate Judge in five pending 42 U.S.C. § 1983 lawsuits and in a pending consolidated 28 U.S.C. § 2254 proceeding.

Complainant complains that the judge and the magistrate judge “are not attending to” the five 42 U.S.C. § 1983 cases which “haven’t been heard” since they were filed in April 2022.

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.” As complainant does not allege the former, and there is no evidence of the latter, the complaint is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

In May 2022, complainant filed three 28 U.S.C. § 2254 petitions challenging several state court convictions and the revocation of his probation. The magistrate judge promptly ordered that the cases be consolidated. Complainant notified the court that the Respondent named in the case caption was incorrect and he asked the court to correct the error. In an order denying complainant’s motions to appoint counsel and for a hearing, the magistrate judge also explained that complainant’s consolidated claims

were properly classified as actions under 28 U.S.C. § 2254 and the proper Respondent was the director of the penal institution who currently has custody of complainant.

Complainant complains that the judge and the magistrate judge have permitted the consolidated 28 U.S.C. § 2254 proceeding to be “filed in [a] wrongful case name.”

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).

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.

/s/ Priscilla Richman

Priscilla Richman

Chief United States Circuit Judge

March 13, 2023