

**FILED**

April 5, 2023

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-23-90014

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## MEMORANDUM

Complainant, a state pretrial detainee, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in complainant's pending 28 U.S.C. § 2241 proceeding.

Complainant complains that "for months [his case] stayed in the same spot." However, a review of the docket indicates that the magistrate judge promptly issued a Report and Recommendation regarding complainant's § 2241 petition. Any delay in entering an order adopting or rejecting the recommendation is not attributable to the magistrate judge and the allegation is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

Without referring to any cases other than his own § 2241 proceeding, complainant further claims that "inmates are filing 2241s and 1983 civil suits, we're paying the filing fees, and every case is going to [the magistrate judge who] is recommending that every case be denied."

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<sup>1</sup> The undersigned notes that had complainant alleged undue delay by the presiding judge, the allegation would be subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) because delay in rendering a decision is not evidence of judicial misconduct. *See* Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings.

To the extent that these allegations relate directly to the merits of the magistrate judge's recommendation in complainant's case, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the wholly unsupported allegation of widespread denial of due process to prisoner litigants 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."

Complainant also claims that the state judge presiding over his criminal trial "made me aware that him [sic] and [the magistrate judge] was [sic] great friends," and "therefore any habeas petition that I filed would be ruled in [the state judge's] favor." He concludes that the magistrate judge is engaged in "corruption" and is "committing treason and warring against the United States Constitution. He is doing personal favors to aid the state court and keep old friendships in-tact."

These wholly unsupported allegations are so lacking in indicia of reliability that no further inquiry is warranted, and they are therefore subject to dismissal 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  
Priscilla Richman  
Chief United States Circuit Judge

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