

FILED

July 19, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-23-90025 and 05-23-90026

MEMORANDUM

Complainant, a pro se litigant, alleges misconduct by the subject United States District Judge and the subject United States Magistrate Judge in a pending civil proceeding.

Complainant alleges that the magistrate judge has engaged in “Obstruction and Intimidation” by:

- directing clerk’s office personnel to “promptly refer” the case to him and to “misplace” mail containing “Judges Copies” of various documents filed by complainant;
- erroneously ordering that complainant’s initial Proof of Service be stricken for failure to effectuate proper service; and,
- improperly entering orders and Findings, Conclusions, and Recommendation while a request for his removal—embedded within complainant’s Objections to the order striking proof of service—is (purportedly) pending before the judge.

Complainant complains that the judge “has shown bias in these proceedings” by:

- failing to rule on complainant’s Objections to the magistrate judge’s orders;

- failing to rule on complainant’s request to remove the magistrate judge and, thereby, improperly “permitt[ing]” the magistrate judge “to preside over preliminary proceedings unchecked” and to “make significant rulings”; and,
- prematurely and prejudicially denying complainant’s Motion for Stay Pending Review.

Complainant further protests that after upholding his Objection to the magistrate judge’s Findings, Conclusions, and Recommendation, the judge improperly referred the Defendant’s Motion to Dismiss back to the magistrate judge for consideration. He surmises that the judge “is potentially utilizing the magistrate judge to supplant arguments on behalf of the Defendant or AUSA.”

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 assertions of impropriety, prejudice, or bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate, they are wholly unsupported and are therefore 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 states that because the Assistant United States Attorney (“AUSA”) representing the Defendant “was not identified as a party to which electronic notice had been provided,” the AUSA would have been unaware of the magistrate judge’s order striking complainant’s Proof of Service and should therefore have filed a response to complainant’s claims within 60 days. Complainant posits that because the AUSA did not “respond to the initial summons, he must have been informed [about the magistrate judge’s order]” through improper ex parte communication from “someone from the Clerk’s Office or the Court.”

This conclusory assertion is so lacking in indicia of reliability that no further inquiry is warranted and is 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.

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

Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

July 18, 2023