

FILED

August 23, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90027

MEMORANDUM

Complainant, a former criminal defendant, alleges misconduct by the subject United States Magistrate Judge in a criminal proceeding.

Complainant asserts that the magistrate judge demonstrated “a biased attitude,” “remove[d] all evidence of falsehoods and due process violations,” and “prejudiced my constitutional right to a fair trial.” For example:

- The magistrate judge ordered that multiple pro se motions filed by complainant—who was represented by counsel—be stricken from the record.
- During a sealed hearing regarding complainant’s first motion to terminate counsel, complainant claimed that defense counsel had told him that “if he filed a motion to suppress, the government would change the police report.” Defense counsel denied the claim. Complainant protests that the magistrate judge “allowed [defense counsel] to so blatantly lie to him,” denied the motion to terminate counsel, and asked complainant and defense counsel “to work it out.”
- Complainant claims that the magistrate judge and defense counsel met ex parte prior to a sealed hearing on complainant’s further

motion to terminate counsel. Despite admitting that he is “not sure of all that was discussed,” complainant asserts that because “it seems” that the magistrate judge did not want him to file a pro se motion to dismiss the indictment attacking “the false affidavit used to obtain an arrest warrant and indictment,” he “is sure that [the magistrate judge and defense counsel] were figuring how to keep [defense counsel’s] motion to dismiss the indictment” if the motion to terminate counsel was granted.

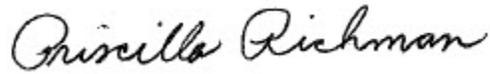
- During the sealed hearing, the magistrate judge commented that the presiding district judge had set a hearing on defense counsel’s “very good motions” to suppress evidence and to dismiss the indictment, and “attempted to convince [me] to keep [the] motions and let [my] new lawyer argue them.” Complainant protests that the magistrate judge was “retaliat[ing] against [me] by lying and misleading [me] in believing that the Motion to Dismiss filed by [defense counsel] was beneficial to me . . . a motion that has no strategic value or purpose for [me].”
- Complainant also asserts that after granting the motion to terminate representation by defense counsel, the magistrate judge “violate[d] [my] Sixth Amendment Right to effective assistance when he appoint[ed] an attorney he has influence over and knows . . . will not attack the false affidavit.”
- In addition, complainant contends that the magistrate judge ordered that his pro se motion to dismiss the indictment be stricken “to remove all evidence of falsehood and due process violations being conducted in these proceedings.”

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 bias, retaliation, and improper motive 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.”

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

Chief United States Circuit Judge

August 16, 2023