

**FILED**

January 3, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-23-90085

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## MEMORANDUM

Complainant, a state prisoner, complains that the subject United States Magistrate Judge unduly delayed screening his 42 U.S.C. § 1983 claims, and he alleges that the delay was “gross either [sic] retaliation or vindictive.”

Although a 20-month delay in judicial action is undesirable, it does not, of itself, constitute judicial misconduct. Complainant presents no evidence in support of his conclusory assertion that the delay was either “retaliatory” or “vindictive,” and when the delay was brought to the judge’s attention, she promptly screened complainant’s claims and entered an order. This aspect of the complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further alleges that the judge:

- Improperly denied his requests to amend/supplement his claims.
- Entered an order of partial dismissal that was “so erroneous and contrary to clear law” that it might indicate a “disability,” and the order “destroy[ed] my claims” in retaliation for filing a prior misconduct complaint against her.

- Lacked jurisdiction to enter the dispositive order after complainant filed notice that he was withdrawing his consent to proceed before a magistrate judge.
- Intentionally violated complainant’s right to due process by “blocking” his motions seeking review of her decision by a district judge.
- Improperly construed his Objection and Argument Appeal to [District Judge X] as a Notice of Appeal.

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 retaliation, improper motive, or disability 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” or that the judge is suffering from a disability.

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.



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Priscilla Richman  
Chief United States Circuit Judge

December 26, 2023