

FILED

November 7, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-23-90087 and 05-23-90088

MEMORANDUM

Complainant, a federal criminal defendant, has filed a complaint alleging misconduct by the subject United States District Judge and the subject former United States Magistrate Judge in complainant’s criminal proceeding.

The magistrate judge has retired from the bench. As provided by 28 U.S.C. § 351(d)(1) and Rule 1 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, retired judicial officers are not subject to the Judicial Improvements Act, and the complaint as to the magistrate judge may therefore be concluded under 28 U.S.C. § 352(b)(2).

Complainant asserts that the district judge: improperly granted defense counsel’s motion for a competency evaluation; improperly “permit[ted] the U.S. Marshal and the U.S. District Attorney to deprive me of my civil rights, 14th Amendment (Due Process of Law—Equal Protection)”; stated (during an unspecified proceeding) that “in her court she do[es] what she want[s], and with whom she want[s], she said that I don’t have the right to spe[a]k or s[ay] anything”; “said [during the competency hearing] that she did not beli[e]ve that I was mental[l]y ill, that she would send me back to [the Federal Medical Center] to rec[eive] treatment to restore[] competency bec[au]se she want[ed] to punish me with jail time that

I was fac[ing] 5-to-10-to-20 years of prison for each count”; and “ignore[d] my request to dismiss the charges d[ue] to lack of judicial power.”

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 assertion of improper motive appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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.”

Complainant further complains that the district judge unduly delayed holding the competency hearing, i.e., the joint advisory regarding the competency evaluation was docketed in April 2022, but the initial competency hearing was not convened until October 2022.¹

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 in a significant number of unrelated cases.” As complainant does not allege the former, and there is no evidence of the latter, the allegation is 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.

¹ Complainant complains that the competency hearing was not held until November 2022, however the minutes of the October 2022 hearing record that it was reset because complainant declined to consent to the psychologist who conducted the evaluation appearing via Zoom.

An order concluding the complaint as to the magistrate judge, and dismissing the complaint as to the district judge, is entered simultaneously herewith.

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

Priscilla Richman
Chief United States Circuit Judge

November 1, 2023

FILED

January 3, 2024

Lyle W. Cayce
Clerk

Before the Judicial Council of the Fifth Circuit

Complaint Numbers: 05-23-90087 and 05-23-90088

Petition for Review by [REDACTED] Regarding
Complaint of Misconduct and/or Disability Against

[REDACTED]

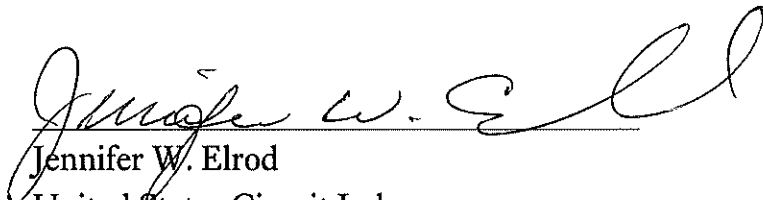
Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief United States Circuit Judge Priscilla Richman, filed November 7, 2023, dismissing the Complaint of [REDACTED] against [REDACTED] and [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

12/21/2023
Date


Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit