

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-24-90008 and 05-24-90009

MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge and the subject United States Magistrate Judge in complainant's pending 42 U.S.C. § 1983 proceeding.

Complainant contends that because the parties [sic] did not unanimously consent to proceed before a magistrate judge, "from day one" the magistrate judge's rulings were "contrary to law, sound discretion, due process, and total lack of jurisdiction," "infect[ed] and blemish[ed] [my] cause," and constituted "gross miscarriage of justice." He further alleges that the magistrate judge continued acting as the presiding judge "in retaliation upon [me] for filing" two (prior) misconduct complaints against her. He also asserts that the magistrate judge caused "undue delay (gross), . . . further harm, danger, injury and one death" by construing his appeals to the district judge as Notices of Appeal to the United States Court of Appeals for the Fifth Circuit.

Complainant complains that the district judge has "refus[ed] to take corrective action or respond in any way reasonable" to the magistrate judge's (purported) misconduct, thereby "allowing violations to destroy my valid claim" and "continuing to allow [my] rights to be trampled on under the umbrella of his jurisdiction."

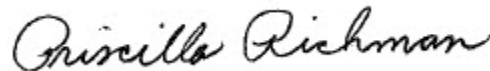
To the extent that these allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of retaliation appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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.

This is complainant’s third complaint in less than nine months regarding the same proceeding. Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

December 29, 2023