

Judicial Council for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 19, 2024

Lyle W. Cayce
Clerk

Complaint Number: 05-24-90021

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in two 42 U.S.C. § 1983 proceedings.

Complainant alleges that in Case 1, the judge:

- did not comply with the district court’s Local Rules “requir[ing] a Certificate of Conference for all Venue Transfer[s],”
- displayed “obvious extreme hostility toward” complainant by “illegally transferr[ing] the case to [a district court in another Circuit] . . . where [complainant] does not live [or] work”;
- “refuse[d] to legally state the justification for the venue transfer”;
- and,
- erroneously and improperly deemed that his post-transfer “Demand for Trial by Jury” was moot.

The allegations relate directly to the merits of decisions or procedural rulings and are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that after transferring Case 1, the judge “purposely and criminally” altered the docket by adding “false information,” i.e., “illegally modif[ying] the case type to a PET Prisoner case whe[n] [I have] NEVER been incarcerated in prison!” He claims that the judge altered the docket “in coordination with [the defendant] to deny [my] [State] Constitutional Rights.”¹

Non-judicial court personnel, not judicial officers, are responsible for entering information on dockets. Regardless, the conclusory assertion that the judge conspired with the defendant to alter the docket (or instructed non-judicial court personnel to do so) 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.”

Complainant asserts that in Case 2, the judge:

- “illegally” permitted an Assistant United States Attorney [“AUSA X”] “[who] does not work for the DOJ” and “never file[d] the required Notice of Appearance” to appear in the case, and complainant proposes that the judge “hired someone from off the street to ‘act like an attorney’ to purposely and willfully impede and obstruct my case”;
- improperly permitted the United States Government to file a Notice of Substitution replacing AUSA X with another attorney, instead of requiring the United States Government to file a “motion to withdraw”;
- “illegally added” the defendant’s Motion to Dismiss “61 days after” service of the complaint, i.e., complainant appears to argue

¹ The copy of the docket attached to the order transferring Case 2 in November 2021 listed the “Nature of Suit” as “440 Civil Rights: Other Civil Rights,” whereas the current version of the docket lists “550 Prisoner Pet/Other: Civil Rights.”

that the motion was untimely and should have resulted in default judgment in his favor; and,

— erroneously recommended that the district court should deny his motion for a jury trial.

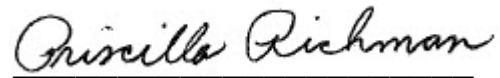
To the extent that the allegations relate directly to the merits of decisions or procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of improper motive appear entirely derivative of the merits-related charges, but to the extent the allegations 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.”

In addition, complainant submits that “it is mathematically very improbable” that three of the five cases he filed in the relevant Division of the United States District Court were “randomly” assigned to the subject judge. He further states: “[I am] very, very uneasy (actually quite fearful for [my] life and [my] family) as to the extent of how [the judge]’s illogical hatred of [me] could potentially be [sic] her hiring someone off the street to injure [sic] me and worse murder [me] or someone in [my] family.”

To the extent that complainant is asserting that the judge interfered with the random assignment of cases, such a conclusory assertion lacks sufficient evidence to raise an inference that misconduct has occurred. In other respects, the proposition that the judge’s adverse rulings demonstrate such animus toward complainant that she might “hire someone” to harm him or his family is so lacking in indicia of reliability that no further inquiry is warranted. These allegations are therefore also 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.

Handwritten signature of Priscilla Richman in cursive script.

Priscilla Richman

Chief United States Circuit Judge

January 9, 2023

**Before the Judicial Council
of the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2024

Lyle W. Cayce
Clerk

Complaint Number: 05-24-90021

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 Judge Priscilla Richman, filed January 9, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

February 9, 2024
Date *Jennifer W. Elrod*
Jennifer W. Elrod
United States Circuit Judge
For the Judicial Council of the Fifth Circuit