

# Judicial Council for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 19, 2024

Lyle W. Cayce  
Clerk

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Complaint Numbers: 05-24-90028 and 05-24-90029

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## MEMORANDUM

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

Complainant alleges that the magistrate judge:

- “ma[de] deliberately indifferent, prejudicial, untimely/slothful, clearly erroneous, and arbitrary capricious decisions not in accordance with the laws nor with the totality of circumstances doctrine”;
- “refused to schedule one single timely speedy hearing for First Amendment freedom of speech/redress of grievances/dialectical civic engagement”;
- “[took] too many months to respond to easy and simple yet imperative motions . . . or has failed entirely to respond to motions”;
- “made threatening arbitrary capricious incoherent intimidation/harassments not in accordance with the law to dismiss [my] complaint with prejudice”;

- “censored and ridiculed [my] style of writing as a way to intimidate [me for not] . . . writ[ing] exactly like a professional attorney”; and
- “arbitrarily contradicted herself by rejecting/denying the defendants’ atrocious motion[s] to dismiss/defense packets yet unfairly not allowing for [me] and Defendants to . . . to give testimony, meet and confer, discovery, participate in speedy hearings, bench trial to resolve controversies and to obtain overdue restitution.”

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).

As to the assertion of “untimely” rulings, complainant points to a Motion for Emergency Hearing he filed on December 11, 2023, i.e., five months after final judgment was entered, demanding a hearing within four days. He alleges that the magistrate judge “ignored/neglected” the motion “in which [I] described [my] shocking, suspicious, and unexpectedly potential[ly] deadly illnesses/disability that could debilitate all [my] capacities to engage in legal matters.” A review of the record shows that the subject district judge denied the motion on December 18, 2023, and the allegation of undue delay is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Without providing any details, complainant also asserts undue delay by the magistrate judge in “respond[ing] to easy and simple yet imperative motions.” A review of the record indicates a delay of six months in issuing an order on complainant’s motion for leave to file a fifth amended complaint, and a delay of eight months in issuing a Report and Recommendation regarding the fifth amended complaint and responsive defense motions. A delay in rendering a decision does not, of itself, constitute judicial misconduct, and the conclusory assertions that the delays were due to

“deliberate indifference,” “slothfulness,” or “prejudice” are 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 alleges that the district judge “demonstrated deliberate indifference and slothfully stonewalled [my] case by providing no direction, no communication, no correspondence, no leadership, nor fair application of promulgated laws allowing blatant favoritism to the defendants and carte blanche to [the magistrate judge] . . . all of which is prejudicial and biased against [me], . . . a protected class IFP pro se plaintiff.” In addition, he complains that the district judge and the magistrate judge “continuously fail[ed] to equally apply the mandatory laws for this case which meets the elements for extreme and outrageous [sic]” and engaged in “intentional invidious discrimination on the basis of Latin race/color, male sex/gender, Christian religion, Hispanic national origin, and disability.”

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, prejudice, discrimination, and retaliation 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.”

Complainant also alleges that the district judge and the magistrate judge are “retaliating against [me] for participating in the judicial conduct and disability complaint process.” The Clerk received complainant’s initial deficient complaint on December 13, 2023, and received his revised sufficient complaint on December 26, 2023. It appears that complainant is alleging that the purported delay in ruling on his Motion for Emergency Hearing filed on December 11, 2023, and/or the denial of that motion on December 18, 2023,

constitute evidence of retaliation against him for filing the initial deficient complaint.

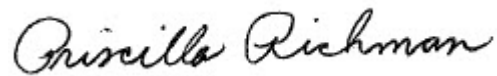
However, the Fifth Circuit Clerk of Court did not notify the district judge and the magistrate judge of the instant complaint until January 4, 2024, and complainant offers no proof that he notified the district judge and the magistrate judge that he had attempted to file a complaint against them prior to December 18, 2023. The allegation of retaliation 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.”

Finally, complainant alleges that the district judge and the magistrate judge are “refusing, without good cause shown, to cooperate in the investigation” regarding the instant complaint.

This baseless assertion is subject to dismissal as frivolous 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.



Priscilla Richman  
Priscilla Richman  
Chief United States Circuit Judge

January 9, 2024