

**FILED**

June 24, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Numbers: 05-24-90081 and 05-24-90082

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## MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge and United States Magistrate Judge.

In the underlying 42 U.S.C. § 1983 proceeding, complainant alleged that the Defendant—a state prison official—violated her constitutional rights by keeping her incarcerated after she became eligible for parole in July 2015 and by not releasing her until May 2022. Complainant alleges the district judge should have recused himself sua sponte because he had presided over three 28 U.S.C. § 2254 applications she filed in 2019 and 2021 challenging her continued incarceration.

The allegation relates directly to the merits of the district judge’s implied decision not to recuse and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that the district judge and the magistrate judge engaged in ex parte communication “involving only one party to a legal matter and in the absence of the other party.” In response to the Clerk’s request to provide further information in support of this claim, complainant submits that ex parte communication occurred when the magistrate judge “made Recommendations done with the interest of one side only and forwarded [them] to the district judge.”

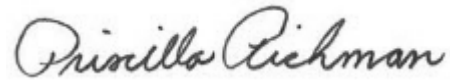
Neither the district judge nor the magistrate judge was a party to the case, and the Report and Recommendations was transmitted to both parties (and was entered on the public docket), and the allegation of ex parte communication is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant also complains that the magistrate judge did not enter recommendations regarding her Motion for Judgment filed in December 2023, and the district judge “should have signed my Motion without a Trial,” and she submits that the judges thereby “fail[ed] to execute their judicial duties in a timely fashion.” In addition, complainant protests that despite her presenting “Laws and Arguments” proving “that the Defendant violated my Constitutional Rights and that the Defendant’s Right to Immunity is Barred,” the magistrate judge engaged in “discrimination” by erroneously and improperly “ma[king] Recommendations on behalf of the Defendant’s Arguments and Laws and declar[ing] all of my Arguments and Laws as no recourse for action of the ones he selected that were not of the Basis of my Complaint.” She further complains that the district judge adopted the erroneous and biased recommendations and dismissed the case in February 2024.

To the extent that these allegations relate directly to the merits of the subject judges’ decisions and rulings, including any implied decision not to address complainant’s pending Motion for Judgment prior to dismissing the case, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias or discrimination appear entirely derivative of the merits-related charge, but to the extent the allegations are separate, they are wholly unsupported and 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.”

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.

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

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Priscilla Richman  
Chief United States Circuit Judge

June 21, 2024