

FILED

July 26, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-24-90091 and 05-24-90092

MEMORANDUM

Complainant, a state prisoner, has filed a barely intelligible complaint alleging misconduct by the subject United States District Judge and United States Magistrate Judge in a 28 U.S.C. § 2254 proceeding.

Complainant appears to complain that the magistrate judge did not address her request for court-appointed counsel and ordered her to refile her petition using the standardized § 2254 form. She seems to further claim that a family member paid the required \$5.00 filing fee by the deadline, but the magistrate judge erroneously recommended that the case should be dismissed for failure to pay the fee. A review of the record shows that receipt of the filing fee was not docketed until two weeks after the recommendation was entered. Regardless, even if the magistrate judge's recommendation was erroneous, complainant suffered no prejudice because the recommendation was withdrawn five days after the receipt was docketed.

Complainant also alleges that the magistrate judge did not mail any rulings or recommendations to her. Contrary to this claim, docketed Acknowledgements of Receipt signed by prison officials show that two deficiency orders, recommendations entered June 7, 2022, and a June 29 order withdrawing the recommendations, were mailed to complainant.¹

¹ This claim is also contradicted, in part, by complainant's docketed letter to the district court explicitly stating that she received the first deficiency order.

Regardless, any alleged failure to distribute the court's mail to complainant is the responsibility of prison personnel, not the magistrate judge.

In addition, complainant alleges that the magistrate judge did not mail to her a copy of a Report and Recommendations entered November 13, 2023, and thereby denied complainant due process because she could not comply with the 14-day deadline to file objections. Although no Acknowledgment of Receipt is docketed for that report, complainant has provided a copy of an envelope addressed to her from the district court and postmarked November 14, 2023, which, given that complainant has filed no other lawsuits in that court, likely contained (or should have contained) a copy of the magistrate judge's November 13 report. Regardless, any alleged failure to mail the report to complainant is the responsibility of non-judicial court personnel, not the magistrate judge.

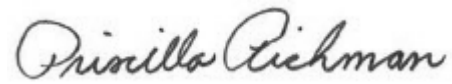
To the extent that these allegations relate directly to the merits of the magistrate judge's decisions and procedural rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the assertions that the magistrate judge inadvertently or intentionally failed to mail copies of orders and reports to complainant are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as frivolous or as "lacking sufficient evidence to raise an inference that misconduct has occurred."

Finally, complainant alleges that because her case "was never refer[r] [sic] to [the district judge] at all," he should not have entered a dispositive order in "another judge's case."

Clearly, complainant does not understand that because her case was assigned to the district judge's docket, it was entirely proper for him to enter the dispositive order, and the allegation is therefore 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.

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

Priscilla Richman
Chief United States Circuit Judge

July 25, 2024