

FILED

June 12, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-24-90074 and 05-24-90075

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 pending civil proceeding filed by complainant and his wife.

Complainant alleges that the magistrate judge “made rulings that were against current statutes,” “ruled on [our] motion for default judgment before such motion [w]as even filed,” and “[a]ccording to [the magistrate judge], [we] must win this case at trial, not by default.”

Complainant alleges that the district judge “has created a hostile environment as it pertains to [us]” and “is repeatedly denying [us] access to the Court in this case.” In support of this claim, he complains that the district judge: “upheld” the magistrate judge’s erroneous rulings; “denied our motion to recuse” the magistrate judge; “denied our motion to recuse her”; “vacat[ed] the default [entered by the Clerk]”; held “that [our] motions to strike are burdensome” to the Court and the Defendant; “and threatened if [we] file any more motions, [the district judge] will sanction [us] up to dismissal of [our] case . . . while [the Defendant] can even file defensive motions after default and it’s ok [sic].”

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 in favor of the Defendant 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 further alleges that “[n]one of [our] motions are ruled on in a timely manner.” The sole example complainant offers is a pending “Plaintiff’s [sic] Application for Temporary Restraining Order” docketed on December 21, 2023. Contrary to this claim, a review of the docket indicates that the judges have ruled promptly on motions that were ripe for consideration. Complainant also complains that the district judge “has never issued a scheduling order causing [us] to be unable to conduct discovery to validate, or further substantiate, [our] claims in this suit.”

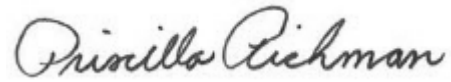
The allegation of undue delay in ruling on motions ripe for consideration, and any assertion of prejudicial delay in issuing a scheduling order, are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

In addition, complainant complains that the district judge “is not sending her orders to us.” The sole example complainant provides is that instead of receiving a copy of an order entered in his case on February 29, 2024, he received a copy of an order entered on the same date by another district judge in a criminal case.

Non-judicial court personnel are responsible for mailing orders to parties who do not have electronic filing privileges, and any assertion that the subject district judge either inadvertently or intentionally mailed the wrong order to complainant 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.

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

Priscilla Richman
Chief United States Circuit Judge

May 29, 2024