

FILED

January 10, 2022

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-22-90020 through 05-22-90022

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the subject United States District Judge, United States Magistrate Judge (“Magistrate Judge A”), and former United States Magistrate Judge (“Magistrate Judge B”), in complainant’s pending 42 U.S.C. § 1983 action.

Complainant complains that after Magistrate Judge B’s spouse enrolled as counsel for one of the defendants, Magistrate Judge B improperly granted that defendant’s motion for an extension of time to respond to a Notice of Deficiency. However, contrary to this claim, the docket records that Magistrate Judge B recused from the case on the day the spouse enrolled as counsel, and preliminary matters were reassigned to Magistrate Judge A who granted the motion.

Regardless, Magistrate Judge B is retired. As provided by 28 U.S.C. § 351(d)(1) and Rule 1 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, retired judicial officers are not subject to the Judicial Improvements Act, and the complaint as to the former magistrate judge may therefore be concluded under 28 U.S.C. § 352(b)(2).

To the extent, if any, that complainant is alleging that Magistrate Judge A erroneously granted the defendant’s motion, the allegation relates directly to the merits of that decision and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that the judge has a “direct conflict of interest” because Magistrate Judge B’s spouse is appearing as counsel in the case. A review of the record shows that complainant raised the same arguments in a motion to recuse which was dismissed by the district judge, and the allegation is therefore construed as being aimed at the merits of that decision.

Complainant also complains that the district judge improperly granted another defendant’s motion for an extension of time to answer complainant’s motion for summary judgment and improperly denied complainant’s motions for default judgment.

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

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 R. Owen
Chief United States Circuit Judge

January 5, 2022