

# Judicial Council for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 10, 2022

Lyle W. Cayce  
Clerk

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Complaint Number: 05-22-90030

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## MEMORANDUM

Complainant, a state prisoner, has filed a complaint alleging misconduct by the subject United States Magistrate Judge in complainant's 42 U.S.C. § 1983 proceeding.

In June 2021, the magistrate judge entered final judgment in favor of the defendants. Between July 1 and July 19, 2021, complainant filed five pro se motions, including a Motion to Alter or Amend Judgment and a Motion for an Extension of Time to File Appeal. He also filed a Notice of Appeal on July 19 which the district court clerk promptly transmitted to the Fifth Circuit. On July 27, complainant filed a Motion for a New Trial.

Complainant alleges that the magistrate judge abused his discretion by not ruling on the five pending motions and the as-yet-unfiled Motion for a New Trial before permitting the clerk to transmit the Notice of Appeal.

The complaint relates directly to the merits of the magistrate judge's implied decisions regarding the court's jurisdiction to rule on motions after a Notice of Appeal was filed and is 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.

This is complainant's third merits-related judicial misconduct complaint, and his second such complaint against the subject magistrate judge regarding the same proceeding. Complainant is WARNED that should he file a further merits-related, conclusory, frivolous, or repetitive complaint, his right to file complaints may be suspended and, unless he is able to show cause why he should not be barred from filing future complaints, the suspension will continue indefinitely. *See* Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

An order dismissing the complaint is entered simultaneously herewith.



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Priscilla R. Owen  
Chief United States Circuit Judge

January 5, 2022