

FILED

September 19, 2023

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-23-90047

MEMORANDUM

Complainant, a state prisoner, alleges that the subject United States District Judge “has exhibited and exuded a level of prejudice and racist [sic] that is conducive to violate my most fundamental right[s]” in two proceedings.

2015 proceeding

In a Motion for Rehearing and Reconsideration filed in September 2019, complainant asked the judge to clarify whether initials added as a suffix to the cause numbers of four cases he filed in 2012 and 2013 complainant’s race. In denying the motion, the judge explained that the suffix had nothing to do with complainant, i.e., it was a designation assigned by the Administrative Office of the United States Courts to identify the Magistrate Judge to whom the cases had been referred.

Complainant complains that the judge failed to identify the magistrate judge, and that the explanation was “erroneous” because the suffix was “a racial designator or moniker . . . to remind [the judge] that I am “Black” so that he could later dismiss my case[s].” Despite noting that in July 2020 he received a letter from the district court clerk clarifying that the suffix was added to cases involving United States Magistrate Judge X, complainant protests that the judge failed to respond to his March 2021 motion asking the court to identify the magistrate judge. Although there is no evidence that the

suffix was added to the cause number in the 2015 proceeding, complainant appears to further submit that the judge's dismissal of that lawsuit was due to "the same and ongoing . . . discriminat[ory] or racis[t]" intent.

A review of 28 U.S.C. § 2254 cases filed and assigned to the judge in 2012 and 2013 and in which preliminary matters were referred to Magistrate Judge X demonstrates as follows:

- In each instance, the case number caption on the Notice and Instructions to Pro Se Party issued by the clerk and subsequent notices and orders entered by Magistrate Judge X included the suffix.
- Correctional institution records indicate that some of the prisoner-litigants who filed those § 2254 cases are "White," i.e., the suffix was added to the case numbers based on referral to Magistrate Judge X, not based on a prisoner-litigant's race.

To the extent that complainant accuses the judge of "using a racial designator or moniker to remind [him] that I am "Black" so that he could later dismiss my case[s]," that claim is clearly contradicted by PACER and correctional institution records and is therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). To the extent, if any, that the allegation relates directly to the merits of decisions or procedural rulings, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the allegation that the dismissal of the 2015 proceeding was due to racial animus appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it is wholly unsupported, and is 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 also complains that the judge:

- "[K]nowingly and intentionally and maliciously erroneously . . . use[d] case citations that he knew I had no access to and misquote[ed] same intentionally to deprive me of my rights."

- “Ruled that the addresses of all defendants were not to be provided to me under any circumstances” and “later ordered that I provide addresses for [those defendants] and, when I could not, he erroneously ordered many defendants be dismissed.”
- “Failed or refused to rule” on certain motions for discovery and for injunctive relief, and thereby “knowingly and intentionally assisted” the defendants.
- “[I]nstructed the [State Attorney-General] that he could use my handwriting as an excuse not to comply with discovery.”
- “[J]ust s[a]t on my case because he [was] required to grant summary judgment in my favor.”

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). To the extent that complainant alleges intentional delay in ruling on motions and/or entering final judgment, these assertions are either contradicted by the record or are entirely conclusory and are therefore subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, any assertions of bias against complainant or favoritism towards the defendants 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.”

2019 proceeding

Complainant complains that after he filed a lengthy reply to the Respondent’s response to his 28 U.S.C. § 2254 petition, the judge, “by and through his magistrate judge, became an advocate for Respondent by informing her that her answer was insufficient . . . and then ordered her to file a supplemental answer.” He submits that the judge thereby “assist[ed] the Respondent in trial strategy . . . far beyond what is allowed; all because I am

a “Black” man.” The allegation is construed as being aimed at the judge’s failure to grant complainant’s request that the Respondent’s supplemental answer be stricken from the record.

To the extent that the allegation relates directly to the merits of a decision or procedural ruling, it is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertion of racial animus appears entirely derivative of the merits-related charges, but to the extent the allegation is separate, it wholly unsupported, and is 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.



Priscilla Richman
Priscilla Richman
Chief United States Circuit Judge

September 15, 2023

**Before the Judicial Council
of the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

November 30, 2023

Lyle W. Cayce
Clerk

Complaint Number: 05-23-90047

Petition for Review by [REDACTED] Regarding
Complaint of Misconduct and/or Disability Against

[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

ORDER

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief United States Circuit Judge Priscilla Richman, filed September 19, 2023, dismissing the Complaint of [REDACTED] against [REDACTED]

[REDACTED] under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

November 21,
Date *2023*

Jennifer W. Elrod
Jennifer W. Elrod

United States Circuit Judge
For the Judicial Council of the Fifth Circuit