

**FILED**

January 3, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-23-90076

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## MEMORANDUM

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

Complainant complains that the judge failed to rule promptly on his motions for an immediate order directing the Respondent to answer to his § 2254 application and for an expedited evidentiary hearing.

The docket records that those motions were referred to the magistrate judge and therefore any delay was not due to inaction by the judge. The allegation is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant further complains that the judge unduly delayed ruling on the § 2254 application.

Pursuant to Rule 4(b)(2) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings, an allegation about delay in rendering a decision or ruling is not cognizable misconduct “unless the allegation concerns an improper motive or habitual delay in a significant number of unrelated cases.” As complainant does not allege the former, and there is no

evidence of the latter, this aspect of the complaint is subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

Complainant also asserts that upon finding that the § 2254 application was successive, the judge was required to transfer it to the Fifth Circuit but failed to do so.

The allegation relates directly to the merits of a decision or procedural ruling and is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii).

In addition, complainant complains that, but for the judge's (purported) delay in ruling on his pending motions and § 2254 application, he would not "have had to file a writ of mandamus" and incur a \$500.00 appellate filing fee.<sup>2</sup> He further asserts that the judge has "apparently conspire[d] with [unspecified Fifth Circuit] clerks and court officials . . . to impede, hinder, and prolong the refunding of a person's rightful property (herein, \$500.00) without the "due process" and "equal protection" of law and to show "good will" toward all men."

To the extent that complainant asserts that the judge was responsible for his decision to seek mandamus relief, the allegation is subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, any assertion of conspiracy 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."

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<sup>1</sup> Had complainant named the magistrate judge as a subject of the instant complaint, the allegation about delay in ruling on his motions would have been subject to dismissal under this provision.

<sup>2</sup> Had complainant named the magistrate judge as a subject of the instant complaint, this allegation would have been subject to dismissal on the same basis.

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 and conclusory judicial misconduct complaint. 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.



Priscilla Richman  
Priscilla Richman  
Chief United States Circuit Judge

December 26, 2023

**FILED**

January 31, 2024

Lyle W. Cayce  
Clerk

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

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Complaint Number: 05-23-90076

Petition for Review by [REDACTED]  
Regarding Complaint of Misconduct and/or Disability Against  
[REDACTED]  
Middle District of Louisiana,  
Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

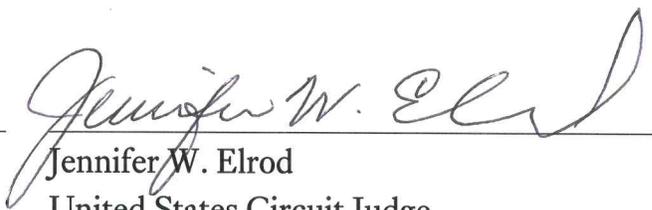
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**ORDER**

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 Judge Priscilla Richman, filed January 3, 2024, dismissing the Complaint of [REDACTED] against [REDACTED] [REDACTED] Middle District of Louisiana, under the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

Jan. 25, 2024  
Date

  
Jennifer W. Elrod  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit