

FILED

January 9, 2024

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Numbers: 05-23-90097 and 05-23-90098

MEMORANDUM

Complainant, a pro se litigant, has filed a complaint alleging misconduct by the two subject United States Magistrate Judges in separate civil rights proceedings.

Allegations against Judge A

Complainant complains that Judge A improperly recommended dismissal of his claims on the merits, and states: “This Judge acted out of her legal actions as bias to let her allies get away with crime.” He also repeats allegations made in a pending complaint, i.e., that Judge A improperly denied his motion to appoint counsel, and that she “has some sort of connections” with the State Attorney General and the defendant State Agency.

To the extent that these allegations relate directly to the merits of the judge’s rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, any assertions of bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate (including the allegation of conflict of interest), 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.”

Allegations against Judge B

Complainant complains that Judge B: “abused his powers” in denying complainant’s motion to proceed in forma pauperis; improperly denied complainant’s motions and granted the defendants’ motions; “used improper communication with only the Defendants”; and, “ignored” complainant’s allegedly meritorious claims. He further argues that the judge had conflicts of interest in hearing the case because the defendant district attorney and private attorney were “allied with the judge”, and because the judge and one defendant “were both involved in the Military” and held the same rank.

To the extent that the allegations relate directly to the merits of the judges’ rulings, they are subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(ii). In other respects, the assertions of bias appear entirely derivative of the merits-related charges, but to the extent the allegations are separate (including the allegation of conflict of interest), 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 also alleges that Judge B improperly “delayed the process” by taking two months to decide the motion to proceed without payment of costs.

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, the allegation is subject to dismissal 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.

This is complainant's second complaint in less than three months alleging misconduct by Judge A in the same proceeding, and he repeats allegations made in the first 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
Chief United States Circuit Judge

December 29, 2023