

**FILED**

January 9, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Numbers: 05-24-90006 and 05-24-90007

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## MEMORANDUM

Complainant, a state prisoner, alleges misconduct by the subject United States District Judge and United States Magistrate Judge in four 42 U.S.C. § 1983 proceedings.<sup>1</sup>

This is complainant’s second complaint against the magistrate judge regarding the same proceedings, and he again alleges that the magistrate judge “intentionally . . . disregard[ed] the U.S. Constitution and laws” regarding “every filing [I] made to the court,” e.g., denying motions for default judgment, “refus[ing] to appoint an attorney,” recommending denial of injunctive relief, and denying “to hear me.”

These repetitive allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii).

Noting that he did not consent to proceed before a magistrate judge, complainant further asserts that the magistrate judge “answer[ed] motions that he hold [sic] no right or power to answer.”

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

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<sup>1</sup> The cases are referred to herein as Case 1, Case 2, Case 3, and Case 4 in order of filing.

Complainant also complains that the magistrate judge “is making rulings that ben[e]fit the defendants, and [is] not forwarding [to me] any of the response[s] from the Defendants or allowing me to submit any evidence. . . . [I]t seem[s] like this judge is doing favors for friends or political act [sic].” The assertion that the magistrate judge has deprived complainant of copies of the defendants’ answers is baseless. The Certificates of Service attached to the defendants’ answers in Case 2 indicate that the defendants mailed copies to complainant. In the two other pending matters, Case 1 and Case 3, the court has yet to order the defendants to file answers or otherwise plead to complainant’s claims. In Case 4, the court screened and dismissed complainant’s claims without ordering the defendants to file answers.

In addition, complainant complains that the magistrate judge erroneously and prejudicially “mixed up documents” in a Report and Recommendation entered in Case 4. For example:

- The magistrate judge “referred to a filing [sic] dated August 26, 2020 and September 8, 2020 which is impossible to have something to do with the claim because [I] filed [my] civil action to the court September 23, 2020.” Complainant asserts that the “mistake was used to dismiss my civil action.” However, a review of the Report and Recommendation indicates that the magistrate judge was referring to dates associated with complainant’s claims against the defendants, not to dates on which complainant’s filings were docketed.
- The magistrate judge intentionally misconstrued complainant’s “notice to the court of the misconduct that took place while the civil action was taken [sic] place” as a response to an order to file a more definite statement. Complainant claims that the magistrate judge “seemed to be retaliating” against complainant for filing a misconduct complaint against him. However, a review of the record shows that on the first page of the uncaptioned nine-page

document docketed as a Notice to the Court, complainant referred to the court's order to file a more definite statement and, in the subsequent pages, he answered the questions posed in the order.

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 the allegations of bias, retaliation, or improper motive are contradicted by the record, they are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). In other respects, the allegations 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.”

Complainant complains that the district judge “accepted what the magistrate judge recommended . . . without further review” of complainant’s claims and objections, “gave a one-page dismissal which was not a reason for dismissal,” and did not specify “which part of 28 U.S.C. § 1915(e)” was the applicable ground for dismissal.

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

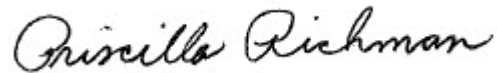
Complainant further protests that the district judge is “acting on one side of the law, which was for the state official[s]” because she has ruled on his Rule 59(e) motion. The docket records that six days prior to filing the motion, complainant filed a Notice of Appeal, at which time the district court was divested of jurisdiction.

There is no evidence of undue or intentional delay, and the allegation is therefore subject to dismissal as frivolous 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 fourth merits-related and conclusory complaint, and he has abused the complaint procedure by filing repetitive allegations. 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 Richman  
Chief United States Circuit Judge

December 29, 2023