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Appendix A — Opinions and Orders of the U.S. Court of Appeals

**A1 Order, U.S. District Court for the E.D. Va. (Richmond), Granting
Dismissal (Sept. 11, 2024)**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

EVELYN R. BENTON,)
Plaintiff,)
)
v.) Civil Action No. 3:23CV704 (RCY)
)
BERKSHIRE RICHMOND LLC,)
Defendant.)
)

ORDER

This matter is before the Court on the Defendant's Motion to Dismiss (ECF No. 3). For the reasons stated in the accompanying Memorandum Opinion, the Motion to Dismiss (ECF No. 3) is GRANTED.

Plaintiff does not request and the Court does not grant leave to amend, rendering this Order final and appealable. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (holding that an order dismissing a case without leave to amend is final and appealable). Should Plaintiff desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the ability to appeal.

Let the Clerk file this Order and the accompanying Memorandum Opinion electronically, notify all counsel accordingly, and mail copies to the Plaintiff, who is proceeding *pro se*.

This case is now CLOSED.

It is so ORDERED.



Roderick C. Young
United States District Judge

Date: September 11, 2024
Richmond, Virginia

**A2 Order, U.S. District Court for the E.D. Va. (Richmond), Denying
Reconsideration (Nov. 5, 2024)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

EVELYN R. BENTON,)
Plaintiff,)
)
v.) Civil Action No. 3:23CV704 (RCY)
)
BERKSHIRE RICHMOND LLC,)
Defendant.)
)

ORDER

In accordance with the accompanying Memorandum Opinion, it is ORDERED that Plaintiff's Motion for Reconsideration (ECF No. 16) is hereby DENIED. The Complaint remains DISMISSED. However, out of deference to Plaintiff's *pro se* status, the Court GRANTS Plaintiff leave to amend the Complaint. Plaintiff is DIRECTED to file an Amended Complaint on or before **December 5, 2024**, upon receipt of which the Clerk shall reopen the case. If Plaintiff fails to file an Amended Complaint on or before that date, the case will remain closed.

Should Plaintiff desire to appeal the Court's disposition of Plaintiff's Motion to Reconsider, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the ability to appeal.

The Clerk is DIRECTED to file this Order and accompanying Memorandum Opinion electronically, send a copy to Plaintiff, who is proceeding *pro se*, and notify the Fourth Circuit of the disposition of the present Motion.

It is so ORDERED.

Date: November 5, 2024
Richmond, Virginia

/s/ R.C.Y.
Roderick C. Young
United States District Judge

A3 Order, U.S. District Court for the E.D. Va. (Alexandria), Granting Motion to Dismiss (March 12, 2025)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EVELYN R. SINKLER.

Plaintiff,

v.

WYNDHAM VACATION RESORTS, INC.,

Defendant.

1:24-cv-02364-MSN-LRV

ORDER

Plaintiff Evelyn Sinkler claims that Defendant, Wyndham Vacation Resorts, Inc. (“Wyndham”), engaged in “fraudulent practices, statutory violations, and failure to comply with Florida’s consumer protection laws in connection with . . . timeshare purchases” she made in 2003 and 2006. ECF 1 (“Compl”) at 1. Wyndham has moved to dismiss on a number of grounds. *See* ECF 26 (“MTD”). The Court need not consider most of those grounds because all of Plaintiff’s claims are barred by the applicable statutes of limitations.

On May 9, 2003, Plaintiff entered into a contract with Wyndham for a timeshare property at “Fairfield Daytona Beach.” Compl. at 3.¹ That contract violated Florida law because the property had not been approved for sale. *Id.* Three years later, on October 27, 2006, Plaintiff entered into a second timeshare contract for a different property (also in Florida) following a visit to the first property. *Id.* In 2009, Plaintiff began to experience issues with the timeshares due to the fees Wyndham charged, which were not fairly disclosed or authorized by the contracts. *Id.* Plaintiff in 2011 “paid off both timeshares in full,” but Wyndham continued to bill her for unexplained charges. *Id.*

¹ The Court accepts as true the facts alleged in Plaintiff’s Complaint for the purposes of this motion. *Johnson v. Westlake Flooring Co.*, 774 F. Supp. 3d 622, 625 (E.D. Va. 2024).

On April 30, 2024, Plaintiff filed a suit against Wyndham in Virginia state court. Compl. at 4. That court “ordered discovery in October 2024, which revealed critical information” such as that Defendant “never provided Plaintiff with the mandatory Public Offering Statement . . . lacked authority to sell the first timeshare . . . failed to record a valid assignment of the first time share . . . [and] lacked a Community Association Manager.” *Id.*

Plaintiff claims she has suffered harm due to Wyndham’s placing her account in collections, engaging in coercive practices, and causing her significant financial losses. Compl. at 4-5. She brings ten claims for relief: (1) breach of contract; (2) violation of the Florida Timeshare Act; (3) violation of the Florida Deceptive and Unfair Trade Practices Act; (4) failure to execute a valid assignment of rights; (5) lack of a Community Association Manager License; (6) unjust enrichment; (7) fraudulent misrepresentation; (8) conversion; (9) civil conspiracy; and (10) negligent misrepresentation. Compl. 6-7.

Defendant moved to dismiss under Fed. R. Civ. P. 12(b)(6), *inter alia*, which tests the sufficiency of Plaintiff’s pleadings. Fed. R. Civ. P. 8 “requires only a short and plain statement of the claim showing that the pleader is entitled to relief.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted) (cleaned up). Accordingly, a plaintiff must allege facts sufficient to “raise the right to relief above the speculative level.” *Id.* “Although a motion pursuant to Rule 12(b)(6) invites an inquiry into the legal sufficiency of the complaint, not an analysis of potential defenses to the claims set forth therein, dismissal nevertheless is appropriate when the face of the complaint reveals the existence of a meritorious affirmative defense.” *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996). Thus, a motion to dismiss for failure to state a claim “may seek dismissal based on an applicable statute of limitations defense.” *Lucas v. Henrico County School Board*, 822 F. Supp 2d 589, 600 (E.D. Va. 2011).

Under Florida law,² Plaintiff's claims are each subject to a statute of limitations of five years or less.³ And Plaintiff's challenges arise directly from her entry into the time share contracts in 2003 and 2006. The latest meaningful date alleged in her complaint is in 2011, when she fully paid her time share contracts. Compl. at 3. All these dates are more than five years before she filed this action, and thus appear to fall outside the statute of limitations.

Plaintiff claims, however, that the statute of limitations only began to run in 2024 under the discovery rule, because she gained access to material facts in her state court litigation against Wyndham. Compl. at 2. Even if a discovery rule applies to all of Plaintiff's claims, she has not alleged facts demonstrating those claims were not reasonably discoverable until October 2024. While she argues that discovery in that litigation led her to discover that Wyndham never provided her a public offering statement, that it lacked authority to sell the timeshare in 2003, that it did not record a valid assignment in 2003, and that it lacked a community association manager, it is unclear why these facts (accepting that they are material to her claim) were not be reasonably discoverable decades ago.

Accordingly, all of Plaintiff's claims are time-barred. It is hereby

ORDERED that Defendant's Motion (ECF 26) is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

/s/

Michael S. Nachmanoff
United States District Judge

March 12, 2025
Alexandria, Virginia

² Plaintiff admits in her opposition that Florida law applies to her claims. ECF 37 ("Opp.") at 5.

³ See Fla. Stat. §§ 95.11(2)(b), (3)(e), (3)(j), (8)(o), 95.031(2).

A4 Order, U.S. District Court for the E.D. Va. (Alexandria), Denying Motion to Vacate (April 21, 2025)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EVELYN R. SINKLER.

Plaintiff,

v.

WYNDHAM VACATION RESORTS, INC.,

Defendant.

1:24-cv-02364-MSN-LRV

ORDER

This matter comes before the Court on *pro se* Plaintiff's Motion to Vacate Void Orders and Enter Default Judgment (ECF 41) and Plaintiff's Consolidated Motion for Relief from Judgment Under Rule 60(b) (ECF 42).

Plaintiff's first motion asks the Court to vacate several orders issued by Magistrate Judge Lindsey R. Vaala (ECF 9, 19, 38), claiming that the Magistrate Judge lacked jurisdiction to issue such orders. ECF 41 at 1–2. Under Rule 72(a) of the Federal Rules of Civil Procedure, a magistrate judge may hear and decide matters that are “not dispositive of a party’s claim or defense.” The orders at issue here granted Defendant’s extension to file its response (ECF 9), denied Plaintiff’s motion to strike Defendant’s entry of appearance and Plaintiff’s motion to vacate the aforementioned extension (ECF 19), and denied reconsideration of the same (ECF 38). None of them disposed of Plaintiff’s claims on the merits, and were therefore properly before Magistrate Judge Lindsey R. Vaala. In the same motion, Plaintiff seeks the entry of default judgment against Defendant Wyndham Vacation Resorts, Inc. (“Wyndham”), arguing that because Defendant’s extension was improperly granted, Defendant failed to respond by the original deadline and is therefore in default. *See* ECF 41 at 1–2. Default judgments are generally disfavored and are

“reserved for only cases where the party’s noncompliance represents bad faith or a complete disregard for the mandates of procedure and the authority of the trial court.” *Mobil Oil Co. de Venezuela v. Parada Jimenez*, 989 F.2d 494, at *3 (4th Cir. 1993) (unpublished table decision).

This is not such a case, so the entry of default would be improper.

Plaintiff’s second motion seeks vacatur of this Court’s dismissal order (ECF 40) under Fed. R. Civ. P 60(b). ECF 42 at 1. Plaintiff claims that “[t]he dismissal rests on void jurisdictional rulings, procedural defects (including improper service and premature termination of the objection period), and a disregard for the Fourth Circuit’s pending mandamus review.” *Id.* Relevant here, a court may relieve a party from its final judgment in instances of mistake, inadvertence, surprise, or excusable neglect, *see* Fed. R. Civ. P. 60(b)(1); where the judgment is void, *see* Fed. R. Civ. P. 60(b)(4); and where any other reason justifies relief, *see* Fed. R. Civ. P. 60(b)(6).

At the outset, “a threshold condition for granting the relief [under Rule 60(b)] is that the movant demonstrate that granting that relief will not in the end have been a futile gesture, by showing that she has a meritorious defense or claim.” *Boyd v. Bulala*, 905 F.2d 764, 769 (4th Cir. 1990). For the reasons stated in this Court’s order dismissing her complaint (ECF 40), the statute of limitations applicable to Plaintiff’s claims has long expired, so she lacks any meritorious case.

Furthermore, Plaintiff’s grounds for vacatur are each unavailing. *First*, Plaintiff claims the Court made a “mistake” under 60(b)(1) in dismissing the case before Plaintiff had the opportunity to object to the Magistrate Judge’s March 3, 2025 order, given that the fourteen-day objection period under Rule 72(a) had not yet expired. ECF 42 at 2. However, this Court and the Magistrate Judge were reviewing separate motions in their respective orders. Accordingly, the Court did not err in issuing its order on a separate motion and there is no prejudice to Plaintiff. *Second*, Plaintiff contends that the dismissal is void under Rule 60(b)(4) because it was based on rulings for which

the Magistrate Judge lacked jurisdiction. As noted above, Judge Vaala acted appropriately under Rule 72 in ruling on Plaintiff's non-dispositive motions. *Third*, Plaintiff claims that relief is warranted under 60(b)(6) due to extraordinary circumstances. ECF 42 at 3. But Rule 60(b)(6) "is only to be invoked upon a showing of exceptional circumstances." *Hartnett v. Hardenbergh*, 2024 WL 4112327, at *2 (E.D. Va. Sept. 6, 2024) (citing *Boyd*, 905 F.2d at 769 (4th Cir. 1990)). She has pointed to none here.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Plaintiff's Motion to Vacate Void Orders and Enter Default Judgment (ECF 41) is DENIED; and it is further

ORDERED that Plaintiff's Motion for Relief under 60(b)(6) (ECF 42) is DENIED.

SO ORDERED.

/s/

Michael S. Nachmanoff
United States District Judge

April 21, 2025
Alexandria, Virginia

Appendix B — Opinions and Orders of the U.S. Court of Appeals

**B1 Order, U.S. Court of Appeals for the Fourth Circuit, Denying Petition
for a Writ of Mandamus (March 14, 2025)**

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-1151

In re: EVELYN R. SINKLER,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Virginia, at Alexandria. (1:24-cv-02364-MSN-LRV)

Submitted: March 11, 2025

Decided: March 14, 2025

Before NIEMEYER, RICHARDSON, and BENJAMIN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Evelyn R. Sinkler, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Evelyn R. Sinkler petitions for a writ of mandamus seeking an order directing the district court to vacate its order granting an extension of time for the defendant in Sinkler's civil case to respond to Sinkler's complaint and denying Sinkler's motion to strike the defendants counsel's notice of appearance. We conclude that Sinkler is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004); *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought and "has no other adequate means to attain the relief [she] desires." *Murphy-Brown*, 907 F.3d at 795 (alteration and internal quotation marks omitted).

Mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007). Here, Sinkler attempts to appeal the district court's orders.

The relief sought by Sinkler is not available by way of mandamus. Accordingly, we deny the petition for writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

B2 Order, U.S. Court of Appeals for the Fourth Circuit, Affirming District Court Judgment, Case No. 24-2122 (Aug. 15, 2025)

A

EXHIBIT

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-2122

EVELYN R. BENTON,**Plaintiff - Appellant,**

v.

BERKSHIRE RICHMOND LLC,**Defendant - Appellee.**

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Roderick Charles Young, District Judge. (3:23-cv-00704-RCY)

Submitted: July 30, 2025**Decided: August 15, 2025**

Before NIEMEYER and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Evelyn R. Benton, Appellant Pro Se. Jason Richard Waters, WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP, McLean, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Evelyn R. Benton appeals the district court's order granting Appellee's Fed. R. Civ. P. 12(b)(6) motion to dismiss her complaint, in which she alleged a violation of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4851-4856, and the court's order denying her Fed. R. Civ. P. 59(e) motion to reconsider. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's orders.

Benton v. Berkshire Richmond LLC, No. 3:23-cv-00704-RCY (E.D. Va. Sep. 11, 2024; Nov. 5, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

B3 Order, U.S. Court of Appeals for the Fourth Circuit, Affirming District Court Judgment, Case No. 25-1442 (Aug. 25, 2025)

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-1442

EVELYN R. SINKLER,**Plaintiff - Appellant,****v.****WYNDHAM VACATION RESORTS, INCORPORATED,****Defendant - Appellee.**

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Michael Stefan Nachmanoff, District Judge. (1:24-cv-02364-MSN-LRV)

Submitted: August 21, 2025**Decided: August 25, 2025**

Before WILKINSON, HARRIS, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Evelyn R. Sinkler, Appellant Pro Se. Terrance Wayne Anderson, Jr., NELSON MULLINS RILEY & SCARBOROUGH, LLP, Boca Raton, Florida, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Evelyn R. Sinkler appeals the district court's orders (1) granting Defendant's motion to dismiss Sinkler's civil action; and (2) denying her "Motion to Vacate Void Orders and Enter Default Judgment" and "Consolidated Motion for Relief From Judgment Under Rule 60(b)." On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b); *see also Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief.").

We have reviewed the record in conjunction with the issues Sinkler raises in her pro se filings with this Court and discern no reversible error. Accordingly, we affirm the district court's orders. *Sinkler v. Wyndham Vacation Resorts, Inc.*, No. 1:24-cv-02364-MSN-LRV (E.D. Va. Mar. 12, 2025; Apr. 21, 2025). We grant Sinkler's motion to submit the appeal based on her informal opening and supplemental opening briefs. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

**B4 Order, U.S. Court of Appeals for the Fourth Circuit, Denying Petition
for Rehearing En Banc, Case No. 24-2122 (Sept. 16, 2025)**

B

FILED: September 16, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-2122
(3:23-cv-00704-RCY)

EVELYN R. BENTON

Plaintiff - Appellant

v.

BERKSHIRE RICHMOND LLC

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc and the motion to amend the petition for rehearing.

For the Court

/s/ Nwamaka Anowi, Clerk

**B5 Order, U.S. Court of Appeals for the Fourth Circuit, Denying Petition
for Rehearing En Banc, Case No. 25-1442 (Sept. 23, 2025)**

B

FILED: September 23, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1442
(1:24-cv-02364-MSN-LRV)

EVELYN R. SINKLER

Plaintiff - Appellant

v.

WYNDHAM VACATION RESORTS, INCORPORATED

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc. Upon consideration of the motions to correct the record and amend the petition for rehearing en banc, the court denies the motions.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix C — Appellate Docket Entries and Record Evidence

C1 Excerpts of Fourth Circuit Docket Entries, Case No. 25-1442 (Sept. 18, 2025)

04/24/2025	<input type="checkbox"/> <u>1</u> 1 pg, 58.48 KB	Case docketed. Originating case number: 1:24-cv-02364-MSN-LRV. Case manager: TBarton. [1001759050] [25-1442] TB [Entered: 04/24/2025 11:48 AM]
04/24/2025	<input type="checkbox"/> <u>2</u> 14 pg, 271.68 KB	INFORMAL BRIEFING ORDER filed. Mailed to: Evelyn Sinkler and Helena Harding. [1001759072] Informal Opening Brief due 05/19/2025. Informal response brief, if any: 14 days after informal opening brief served. [25-1442] TB [Entered: 04/24/2025 11:56 AM]
04/24/2025	<input type="checkbox"/> <u>3</u> 1 pg, 88.36 KB	RECORD requested from Clerk of Court [1001759096]. Due: 05/08/2025. [25-1442] TB [Entered: 04/24/2025 12:13 PM]
04/28/2025	<input type="checkbox"/> <u>4</u> 7 pg, 251.25 KB	INFORMAL OPENING BRIEF by Evelyn R. Sinkler. [1001760914] [25-1442] TB [Entered: 04/28/2025 01:59 PM]
05/14/2025	<input type="checkbox"/> <u>5</u>  0 pg, 0 KB	(ENTRY RESTRICTED) RULE 45 NOTICE issued to Evelyn R. Sinkler re: filing of disclosure form. Case may be dismissed if default is not cured within 15 days. Mailed to: Evelyn Sinkler. [1001769944] [25-1442]-- [Edited 05/14/2025 by TB - Disclosure received same day, R45 moot] TB [Entered: 05/14/2025 10:00 AM]
05/14/2025	<input type="checkbox"/> <u>6</u> 3 pg, 500.19 KB	DISCLOSURE STATEMENT by Evelyn R. Sinkler. Was any question on Disclosure Form answered yes? No. [1001770003] [25-1442] TB [Entered: 05/14/2025 10:23 AM]
05/14/2025	<input type="checkbox"/> <u>7</u> 17 pg, 1.06 MB	Supplemental INFORMAL OPENING BRIEF by Evelyn R. Sinkler. [1001770017] [25-1442] TB [Entered: 05/14/2025 10:28 AM]
05/14/2025	<input type="checkbox"/> <u>8</u> 3 pg, 243.16 KB	DOCUMENT titled "Notice of non-admission and failure to file appearance" by Evelyn R. Sinkler. [1001770427] [25-1442] TB [Entered: 05/14/2025 03:18 PM]
05/15/2025	<input type="checkbox"/> <u>9</u> 5 pg, 130.99 KB	Supplemental INFORMAL OPENING BRIEF by Evelyn R. Sinkler. [1001771253] [25-1442] TB [Entered: 05/15/2025 02:49 PM]
06/17/2025	<input type="checkbox"/> <u>10</u> 2 pg, 61.17 KB	MOTION by Evelyn R. Sinkler to submit on the appellant's brief. Date and method of service: 06/17/2025 hand delivery. [1001790026] [25-1442] TB [Entered: 06/17/2025 02:28 PM]
07/11/2025	<input type="checkbox"/> <u>11</u> 1 pg, 59.71 KB	APPEARANCE OF COUNSEL by Terrance W Anderson Jr for Wyndham Vacation Resorts, Incorporated. [1001802617] [25-1442] Terrance Anderson [Entered: 07/11/2025 01:25 PM]
07/18/2025	<input type="checkbox"/> <u>12</u> 3 pg, 67.15 KB	Letter re: [11] appearance of counsel by Evelyn R. Sinkler. [1001806710] [25-1442] TB [Entered: 07/18/2025 10:53 AM]
08/25/2025	<input type="checkbox"/> <u>13</u> 2 pg, 112.6 KB	UNPUBLISHED PER CURIAM OPINION filed. Motion disposition in opinion--granting Motion to submit on appellant's brief [10]. Originating case number: 1:24-cv-02364-MSN-LRV. Copies to all parties and the district court/agency. Mailed to: Evelyn R. Sinkler. [1001828660] [25-1442] TB [Entered: 08/25/2025 10:14 AM]
08/25/2025	<input type="checkbox"/> <u>14</u> 4 pg, 164.67 KB	JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 1:24-cv-02364-MSN-LRV. Entered on Docket Date: 08/25/2025. Copies to all parties and the district court/agency. Mailed to: Evelyn R. Sinkler. [1001828665] [25-1442] TB [Entered: 08/25/2025 10:16 AM]
09/02/2025	<input type="checkbox"/> <u>15</u> 7 pg, 322.5 KB	PETITION for rehearing en banc by Evelyn R. Sinkler. [1001833717] [25-1442] TB [Entered: 09/02/2025 04:33 PM]
09/02/2025	<input type="checkbox"/> <u>16</u> 1 pg, 73.9 KB	Mandate temporarily stayed pending ruling on petition for rehearing or rehearing en banc. Mailed to: Evelyn Sinkler. [1001833719] [25-1442] TB [Entered: 09/02/2025 04:33 PM]
09/05/2025	<input type="checkbox"/> <u>17</u> 6 pg, 518.31 KB	MOTION by Evelyn R. Sinkler to correct the record. Date and method of service: 09/05/2025 hand delivery. [1001836079] [25-1442] TB [Entered: 09/05/2025 03:03 PM]
09/08/2025	<input type="checkbox"/> <u>18</u> 7 pg, 561.11 KB	MOTION by Evelyn R. Sinkler to amend petition for rehearing en banc to include evidence of missing record. Date and method of service: 09/08/2025 hand delivery. [1001836704] [25-1442] RP [Entered: 09/08/2025 11:30 AM]

C2 Excerpts of Fourth Circuit Docket Entries, Case No. 24-2122 (Oct. 3, 2025)

11/07/2024	<input type="checkbox"/> <u>1</u> 1 pg, 56.97 KB	Case docketed. Originating case number: 3:23-cv-00704-RCY. Case manager: JeffNeal. [1001668340] [24-2122] JN [Entered: 11/07/2024 02:02 PM]
11/07/2024	<input type="checkbox"/> <u>2</u> 12 pg, 215.34 KB	INFORMAL BRIEFING ORDER filed. [1001668345] Informal Opening Brief due 12/02/2024. Informal response brief, if any: 14 days after informal opening brief served. Mailed to: Evelyn Benton. [24-2122] JN [Entered: 11/07/2024 02:08 PM]
11/07/2024	<input type="checkbox"/> <u>3</u> 1 pg, 89.92 KB	RECORD requested from Clerk of Court [1001668347]. Due: 11/21/2024. [24-2122] JN [Entered: 11/07/2024 02:10 PM]
11/14/2024	<input type="checkbox"/> <u>4</u> 2 pg, 1.13 MB	Notice issued re: amended complaint. Mailed to: Evelyn Benton. [1001671562] [24-2122] JN [Entered: 11/14/2024 01:18 PM]
11/21/2024	<input type="checkbox"/> <u>5</u> 1 pg, 1.7 MB	APPEARANCE OF COUNSEL by Jason R. Waters for Berkshire Richmond LLC. [1001675676] [24-2122] Jason Waters [Entered: 11/21/2024 01:59 PM]
11/21/2024	<input type="checkbox"/> <u>6</u> 3 pg, 46.38 KB	DISCLOSURE STATEMENT by Berkshire Richmond LLC. Was any question on Disclosure Form answered yes? No [1001675680] [24-2122] Jason Waters [Entered: 11/21/2024 02:01 PM]
11/27/2024	<input type="checkbox"/> <u>7</u> 11 pg, 357.86 KB	INFORMAL OPENING BRIEF by Evelyn R. Benton. [1001678823] [24-2122] JN [Entered: 11/27/2024 12:00 PM]
11/27/2024	<input type="checkbox"/> <u>8</u> 1 pg, 83.6 KB	DOCKETING FORMS FOLLOW-UP NOTICE ISSUED to Evelyn R. Benton re: filing of disclosure form. Mailed to: Evelyn Benton. [1001678824] [24-2122] JN [Entered: 11/27/2024 12:01 PM]
12/02/2024	<input type="checkbox"/> <u>9</u> 2 pg, 74.77 KB	DISCLOSURE STATEMENT by Evelyn R. Benton. Was any question on Disclosure Form answered yes? No [1001679938] [24-2122] JN [Entered: 12/02/2024 04:38 PM]
12/11/2024	<input type="checkbox"/> <u>10</u> 31 pg, 487.53 KB	INFORMAL RESPONSE BRIEF by Berkshire Richmond LLC. [1001684920] [24-2122] Jason Waters [Entered: 12/11/2024 11:43 AM]
12/16/2024	<input type="checkbox"/> <u>11</u> 22 pg, 1.04 MB	INFORMAL REPLY BRIEF by Evelyn R. Benton. [1001687346] [24-2122] JN [Entered: 12/16/2024 01:14 PM]
03/06/2025	<input type="checkbox"/> <u>12</u> 4 pg, 436.94 KB	DOCUMENT - notice to inform the court by Evelyn R. Benton. [1001731852] [24-2122] TW [Entered: 03/06/2025 09:21 AM]
08/15/2025	<input type="checkbox"/> <u>13</u> 2 pg, 125.23 KB	UNPUBLISHED PER CURIAM OPINION filed. Originating case number: 3:23-cv-00704-RCY. Copies to all parties and the district court/agency. Mailed to: Evelyn Benton. [1001823335] [24-2122] JN [Entered: 08/15/2025 10:25 AM]
08/15/2025	<input type="checkbox"/> <u>14</u> 4 pg, 164.25 KB	JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 3:23-cv-00704-RCY. Entered on Docket Date: 08/15/2025. Copies to all parties and the district court/agency. Mailed to: Evelyn Benton. [1001823337] [24-2122] JN [Entered: 08/15/2025 10:27 AM]
08/20/2025	<input type="checkbox"/> <u>15</u> 6 pg, 172.39 KB	PETITION for rehearing en banc by Evelyn R. Benton. [1001826575] [24-2122] JN [Entered: 08/20/2025 03:28 PM]
08/20/2025	<input type="checkbox"/> <u>16</u> 1 pg, 74.26 KB	Mandate temporarily stayed pending ruling on petition for rehearing or rehearing en banc. [1001826577] [24-2122] JN [Entered: 08/20/2025 03:29 PM]
09/08/2025	<input type="checkbox"/> <u>17</u> 7 pg, 424.2 KB	MOTION by Evelyn R. Benton to amend petition for rehearing. Date and method of service: 09/08/2025 hand delivery. [1001836788] [24-2122] JN [Entered: 09/08/2025 12:02 PM]
09/16/2025	<input type="checkbox"/> <u>18</u> 1 pg, 53.29 KB	COURT ORDER filed denying Motion for rehearing en banc [15]; denying Motion to amend/correct [17]. Copies to all parties. [1001842478] [24-2122] JN [Entered: 09/16/2025 10:32 AM]
09/18/2025	<input type="checkbox"/> <u>19</u> 21 pg, 513.85 KB	MOTION by Evelyn R. Benton to stay mandate. Date and method of service: 09/18/2025 hand delivery. [1001844765] [24-2122] JN [Entered: 09/18/2025 01:35 PM]
09/18/2025	<input type="checkbox"/> <u>20</u> 20 pg, 467.23 KB	MOTION by Evelyn R. Benton to vacate judgment. Date and method of service: 09/18/2025 hand delivery. [1001844772] [24-2122] JN [Entered: 09/18/2025 01:38 PM]
09/18/2025	<input type="checkbox"/> <u>21</u> 1 pg, 51.86 KB	ORDER filed denying Motion to stay mandate [19]. Copies to all parties. Mailed to: Evelyn Benton. [1001844915] [24-2122] JN [Entered: 09/18/2025 03:45 PM]
09/18/2025	<input type="checkbox"/> <u>22</u> 1 pg, 82.3 KB	NOTICE ISSUED re: further consideration unavailable - Local Rule 40(h). Document: [20] Motion to vacate. [1001844919] [24-2122] Mailed to: Evelyn Benton. JN [Entered: 09/18/2025 03:47 PM]
09/26/2025	<input type="checkbox"/> <u>23</u> 1 pg, 75.12 KB	Mandate issued. Referencing: [13] unpublished per curiam opinion, [14] judgment order. Originating case number: 3:23-cv-00704-RCY. Mailed to: Evelyn Benton. [1001849382] [24-2122] PB [Entered: 09/26/2025 09:03 AM]

Appendix D — Judicial Misconduct and Council Records

D1 Memorandum and Order, Chief Judge Diaz, Dismissing Misconduct Complaints (Oct. 21, 2025)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of	*	Nos. 04-25-90185
Judicial Complaints	*	04-25-90186
Under 28 U.S.C. § 351	*	04-25-90187
		04-25-90188
		04-25-90189
		04-25-90190

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against six circuit judges pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The Act provides an administrative remedy for judicial conduct that is “prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a).

Complainant filed two separate pro se civil actions, both of which were dismissed by the district court. Complainant appealed each of the dismissals and, in each case, a panel of the Fourth Circuit affirmed the district court’s decision. The subject judges each participated in one of the two Fourth Circuit panels.

In her judicial complaints, complainant alleges that the “official docket[s]” in these two underlying cases “confirm[] that no district court record was ever transmitted to or filed with the Fourth Circuit.” Complainant contends that the subject judges affirmed the district court’s orders without reviewing the records below, which violated complainant’s due process rights and deprived her of meaningful appellate review. Finally, complainant requests an investigation into whether the subject judges’ alleged failure to review the underlying records “reflects a broader pattern of neglect in the handling of pro se cases.”

Pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), a chief judge may dismiss a judicial complaint upon a finding that the complaint is “directly related to the merits of a decision or procedural ruling.” The procedure that has been established to consider misconduct complaints “is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” *In re Memorandum of Decision*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). It would be “entirely contrary” to the purpose of the Judicial Conduct and Disability Act “to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.” *Id.* To allow “judicial decisions to be questioned in misconduct proceedings would inevitably begin to affect the nature of those decisions and would raise serious constitutional issues regarding judicial independence under Article III of the Constitution.”

Id.

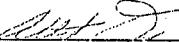
Upon review, I have verified that the district court record in each underlying case was properly requested and obtained by the circuit clerk’s office, and then made available to the panels. Complainant’s claim that the subject judges failed to adequately review these records is dismissed as merits-related pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

A chief judge may also dismiss a judicial complaint upon a finding that it “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii). A complainant must “detail[] the specific facts on which [her] claim[s] of misconduct . . . [are] based.” Rule 6(b), Rules for Judicial-Conduct and Judicial-

Disability Proceedings; *see In re Complaint of Jud. Misconduct*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (“[Judicial-Conduct] Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if he opens an investigation and . . . looks hard enough in a particular direction, he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible.”). Allegations of misconduct should be supported by “objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) . . . , and adverse rulings alone do not constitute proof of bias” or other misconduct. *In re Complaint of Jud. Misconduct*, 583 F.3d 598, 598 (9th Cir. 2009); *see also In re Doe*, 2 F.3d 308, 311 (8th Cir. Jud. Council 1993) (providing that judicial complaint process may not be used to pursue speculative claims). Complainant’s allegation that the subject judges may be negligent in their handling of pro se cases “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii). Any such allegation is both unsupported and lacking in “objectively verifiable proof.” *In re Complaint of Jud. Misconduct*, 583 F.3d at 598.

Accordingly, these judicial complaints are dismissed as merits-related and lacking in evidentiary support pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

IT IS SO ORDERED.



Albert Diaz
Chief Judge

**D2 Order of the Judicial Council of the Fourth Circuit, Denying Review of
Misconduct Complaints (Nov. 24, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
JUDICIAL COUNCIL

In the Matter of Judicial	*	Nos.	04-25-90185
			04-25-90186
Complaints under 28 U.S.C.	*		04-25-90187
			04-25-90188
Section 351	*		04-25-90189
			04-25-90190

O R D E R

Upon consideration of the materials listed below:

Judicial Complaints, filed October 6, 2025;

Record Materials;

Memorandum and Order, filed October 21, 2025; and

Petition for Review, filed November 14, 2025.

It is ORDERED that the Petition for Review in Nos. 04-25-90185, 04-25-90186, 04-25-90187, 04-25-90188, 04-25-90189, and 04-25-90190 is hereby denied.

FOR THE COUNCIL:

James N. Ishida

James N. Ishida
Secretary

Date: November 20, 2025