

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. Nos. 03-12-90056, 03-12-90057, 03-12-90058, 03-12-90059

---

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

MEMORANDUM OPINION

---

(Filed: September 19, 2013)

PRESENT: McKEE, Chief Judge.

These four complaints of judicial misconduct are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Magistrate Judge (“Subject Judge I”) and two United States District Judges (“Subject Judge II” and “Subject Judge III”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Complainant, a licensed attorney, represents civil litigants before Subject Judges I, II, and III. The allegations of the four complaints concern actions taken by the three Subject Judges in several related cases involving Complainant's former client. The cases were removed to District Court by the defendants, and each case was eventually remanded back to state court.

## I.

In the complaint against Subject Judge I, Complainant primarily alleges that Subject Judge I “act[ed] beyond the powers of a Magistrate Judge.” Specifically, Complainant contends that Subject Judge I improperly scheduled a pre-trial conference before the presiding District Judge issued a ruling on a pending motion to remand the matter to state court. Complainant contends this reflects an example of “the Magistrate Judge taking control of a case in which the United States District Court had no jurisdiction based upon plaintiff’s motion[ ] for remand. . . .”

Decisions about whether and when to hold scheduling conferences are within a judge’s official case management responsibilities. Accordingly, challenges to such decisions are merits-related. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The “misconduct procedure [under the Act] 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 of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Complainant further alleges, without elaboration, explanation, or evidentiary support, that “[Subject Judge I’s] acts in this case are examples of a judge: (a) using the judge’s office to obtain special treatment for friends or associates; (b) treating litigants or attorneys in a demonstrably egregious and hostile manner; and (c) discriminating against litigants or attorneys on account of other legally protected attribute[s].” These conclusory statements appear to be premised solely upon the merits-related dispute discussed previously. The record contains no evidence whatsoever to lend support to Complainant’s allegations. Accordingly, to the extent they are not merits-related, Complainant’s allegations concerning Subject Judge I are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

## II.

The complaint against Subject Judge II is unclearly phrased and difficult to understand. It appears that Complainant’s primary contention is that Subject Judge II was hostile toward him during a telephone conference.<sup>1</sup> According to Complainant, Subject Judge II was “rude and offensive” and “acted as if he was talking to a child,” although Complainant acknowledges that “my response [also] was not polite.” Complainant

---

<sup>1</sup> As Complainant notes, the conference in question was not transcribed.

contends that the alleged hostility on the part of Subject Judge II made it “obvious” that Subject Judge II “had engaged in improper discussions with the attorneys for [the defense]” and “was totally hostile to my client’s position and to anything I said.” As a result, Complainant felt compelled to withdraw from the representation rather than “be charged with contempt of court.”

Complainant acknowledges that he previously presented these allegations “as part of my motion to disqualify [Subject Judge II]. . . .”<sup>2</sup> Subject Judge II denied the motion to disqualify. In the order denying the motion, Subject Judge II specifically denied taking part in any ex parte conversations, stating that “[m]y knowledge of the facts of this case at the time of the teleconference was derived from the record in this matter and in related cases. . . .” Subject Judge II further stated that he “did not display deep-seated and unequivocal antagonism that would render fair judgment impossible.”

Because these allegations were presented to the Subject Judge and considered in the course of deciding the motion to disqualify, the allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

---

<sup>2</sup> The motion to disqualify Subject Judge II was filed pro se by Complainant’s former client.

Next, Complainant provides the following list, stating: “the basis for this complaint is that [Subject Judge II]: (a) used the judge’s office to obtain special treatment for friends or associates; (b) had improper discussions with parties or counsel for one side in the case; (c) treated attorneys in a demonstrably egregious and hostile manner; and (d) discriminated against litigants or attorneys on account of legally protected attributes, such as, their country of origin.” Apart from the discussion of the allegations concerning the allegedly hostile telephone conference, however, Complainant does not elaborate upon these claims. Because the conclusory statements are entirely lacking in evidentiary support, they are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant concludes the complaint against Subject Judge II by stating vaguely that “[t]here is no question in my mind that [Subject Judge II] received some benefit to handle the interpleader actions and the transferred actions the way he did.”

Complainant does not indicate what sort of “benefit” he believes Subject Judge II received, and offers no basis for this claim apart from his personal suspicion. Without more, suspicion alone is insufficient to support such a serious claim. A review of the record provides no indication that the Subject Judge engaged in any form of judicial misconduct. Accordingly, Complainant’s claim is dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

### III.

Complainant filed two complaints naming Subject Judge III. I requested that the Subject Judge respond to Complainant's allegations. Having reviewed the Subject Judge's response, I now address Complainant's complaints.

The complaints against Subject Judge III are rambling, imprecise, and difficult to understand. It appears that Complainant's primary contentions concern Subject Judge III's marriage to a partner in a local law firm. Specifically, Complainant alleges that, shortly after Subject Judge III granted Complainant's motion to remand his client's case to state court, Subject Judge III's wife's law firm entered an appearance on behalf of the defendants. Complainant states, "[i]t is my belief . . . that the judge knew of the negotiations between [the defendant] and [Subject Judge III's wife's law firm] prior to issuing the remand order. . . ." Complainant thus implies, albeit vaguely, that Subject Judge III decided to remand the case for the inappropriate purpose of benefiting his wife's legal career.

Complainant raised a similar allegation in a petition for a writ of mandamus, in which he stated that "[Subject Judge III's] actions in [these cases] are directly linked to representation of the defendant . . . by the law firm of [Subject Judge III's wife]." That petition was denied by the Court of Appeals, and Complainant cannot challenge the merits of that conclusion in this judicial misconduct proceeding. See 28 U.S.C.

§ 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, Subject Judge III categorically denies that he had any involvement in these cases beyond what is reflected in the District Court record. As Complainant offers no support for his contentions apart from his personal suspicions and his disagreement with the merits of the Subject Judge’s decisions, these allegations are dismissed as unsupported by evidence that misconduct has occurred. 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings

Complainant further alleges that Subject Judge III delays recusing himself from cases in which his wife appears. Complainant contends that “[a] cursory review of the docket entries will show that in cases involving [Subject Judge III’s wife], he [Subject Judge III] does not automatically recuse himself but waits until a motion requires the ruling of a district court judge. When action is required the case is assigned to [Subject Judge II].”

The timing of a recusal decision is largely a merits-related issue, as it is part of a judge’s official case management responsibilities. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent this allegation is not merits-related, it is frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. As Complainant acknowledges, Subject Judge III recuses himself from cases involving his wife before any judicial action is required. There is no reasonable basis for concluding that a failure to “automatically recuse” at some even

earlier stage of a case amounts to judicial misconduct. Accordingly, this claim is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Next, apart from the allegations concerning Subject Judge III's wife, Complainant alleges that, in ordering Complainant's case remanded to state court, Subject Judge III included a "gratuitous statement" upon which the state court judge later relied to dismiss the case. In addition, Complainant alleges that the state court judge to whom the case was assigned "had been a co-worker with [Subject Judge III]," implying that both the remand decision and the subsequent dismissal from state court were controlled by Subject Judge III and were motivated by Subject Judge III's "attempt[ ] to manipulate this case so that plaintiffs would be denied a fair hearing."

To the extent Complainant takes issue with an allegedly "gratuitous" statement in the Subject Judge's remand opinion, this is largely a non-cognizable merits-related dispute. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, upon review, there is no statement in the remand order that appears to be "gratuitous" or included as an inappropriate signal or directive to a state court judge.<sup>3</sup>

To the extent Complainant implies that Subject Judge III somehow controlled the ultimate outcome of the case in state court, he once again bases his claim on mere

---

<sup>3</sup> As a practical matter, it cannot be overlooked that Complainant filed the remand motion on behalf of his client. Accordingly, there is little logic to Complainant's claim that Subject Judge III's decision was motivated by ill will toward Complainant or his client.

suspicion, and offers no evidence whatsoever to substantiate these allegations. Indeed, it appears that Complainant is relying solely on his apparent disagreement with the state court judge's decision to dismiss the case – a merits-related challenge to a state court judge's decision – a matter that clearly is not properly addressed in this forum.

Accordingly, Complainant's allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Next, Complainant vaguely alleges that Subject Judge III improperly delayed rendering certain rulings. Specifically, Complainant states that, when one of his cases was removed to federal court in 2008, he filed two motions to remand. Complainant alleges, “[the Subject Judge] refused to rule on any of the motions. As had become his habit . . . the motions were ignored.”

As an initial matter, I note that Complainant raised similar claims of delay in at least two petitions for a writ of mandamus, which were denied by the Court of Appeals. To the extent Complainant's current claims represent a collateral challenge to those decisions, they are merits-related and not cognizable in this proceeding. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In addition, a claim of delay in a single proceeding may qualify as cognizable misconduct only where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and

Judicial-Disability Proceedings. The record does not provide any evidence to substantiate a claim of improper motive on the part of Subject Judge III. Indeed, as a factual matter, the record does not support a claim that the Subject Judge “ignored” Complainant’s motions at all. Rather, upon review, the record reflects reasonably prompt resolution of Complainant’s motions and no periods of extreme or unusual delay. Accordingly, to the extent the allegations are not merits-related, they are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant claims that Subject Judge III exercises inappropriate control over the actions of a Magistrate Judge. He states, “[Subject Judge III] controlled what [the Magistrate Judge] did in cases such as these [i.e., Complainant’s cases] because [the Magistrate Judge] needed [Subject Judge III] to renominate him for another term.”

Despite Complainant’s claim that “it is obvious” that the Magistrate Judge’s actions are part of a “plan concocted by [Subject Judge III],” Complainant’s allegations are far from obvious. As best I can understand it, Complainant contends that the Magistrate Judge transferred an interpleader action from one division to another, and Complainant believes, without meaningful explanation as to why, that Subject Judge III controlled that decision. To the extent these allegations are not merely a merits-related challenge to a transfer decision by a Magistrate Judge, Complainant’s incoherent and unsupported assertions of improper influence fall far short of creating an inference that Subject

Judge III engaged in any form of misconduct. 28 U.S.C. § 351(a); Rule 3(h)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these claims are dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

IV.

For all of the foregoing reasons, the complaints against Subject Judges I, II, and III are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

/s/ Theodore A. McKee  
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. Nos. 03-12-90056, 03-12-90057, 03-12-90058, 03-12-90059

---

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

ORDER

---

(Filed: September 19, 2013)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are hereby dismissed under 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the office of the clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

/s/ Theodore A. McKee  
Chief Judge

Dated: September 19, 2013