

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90062; 03-22-90067;
03-22-90068; 03-22-90070

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 6, 2022)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and a United States Magistrate Judge (“Subject Judge III”). For the reasons discussed below, the complaints 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 filed an employment discrimination action in 2017. During the matter's lengthy pendency, it has been before a number of District and Magistrate Judges, including Subject Judges I, II, and III. Subject Judge II recently granted summary judgment to the defendant and closed the case. Complainant has filed an appeal.

Complainant has submitted a series of four lengthy complaints of judicial misconduct as well as a sworn supplement to the complaints.¹ Although all cognizable allegations have been considered, a brief summary will be provided here.

Complaint One: Complainant alleges, among other things, that Subject Judge III: (1) improperly considered a late filing by the defense; (2) erroneously denied Complainant's attorney leave to withdraw, which "forced [Complainant] to retain an attorney who will not allow the truth to be submitted because he has his own conflict of interest"; and (3) "aid[ed] and abett[ed] the unauthorized practice of law" by the law firm representing Complainant, because that firm uses two different names and addresses in court filings. Complainant claims that Subject Judge III violated Complainant's constitutional rights, acted in the absence of jurisdiction, "misappl[ied] the law[,] and fail[ed] to rule on evidence."

Complaint Two: This complaint primarily concerns Subject Judge I's alleged delay in ruling on one of Complainant's submissions — a "motion to appeal" a decision by

¹ The complaints include allegations concerning the behavior of court employees, attorneys, and other individuals. Individuals who are not federal judges are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations of misconduct concerning such individuals therefore will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Subject Judge III. Complainant alleges that the purportedly undue delay was a form of retaliation, a “malicious[] attempt[] to have [his] option to appeal waived,” and demonstrates Subject Judge I’s collusion with the defendants. In addition, Complainant alleges that Subject Judge I wrongfully denied him the ability to proceed pro se and “forc[ed]” Complainant to be represented by a law firm engaged in the unauthorized practice of law.

Complaint Three: Complainant alleges that Subject Judge III “applie[d] the wrong law” and impeded Complainant’s right to be heard by issuing several orders in the course of Complainant’s case. Complainant contends that Subject Judge III “ignore[d] [Complainant’s] submissions” and “forced [him] to retain an attorney who will not allow the truth to be submitted because he has his own conflict of interest.” Complainant claims these actions violated his constitutional rights.

Complaint Four: Complainant alleges in this complaint that Subject Judge II issued orders that are void because Subject Judge II “does not have a Judicial Bond.” Complainant further alleges that Subject Judge II retaliated against him by entering summary judgment in favor of the defendants and accuses Subject Judge II of engaging in “racketeering” with the defendants. Complainant describes the summary judgment decision as “discriminatory” and “racist” and points out his numerous reasons for disagreeing with Subject Judge II’s findings and conclusions.

The majority of Complainant’s allegations dispute rulings rendered by the three Subject Judges in the course of Complainant’s civil proceeding. In addition to disagreeing

with the judgment entered against him, Complainant disputes numerous interim rulings, including the order denying his request to discharge his attorneys and the decision to accept allegedly late filings by the defense. All such allegations are merits related and do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”). Indeed, Complainant is currently pursuing an appeal from the judgment entered against him. “The misconduct procedure [under the Judicial Conduct and Disability 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’s merits-related allegations are therefore subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant’s non-merits-related claims lack substantiation. The record is devoid of evidence suggesting criminal activity, conspiracy, retaliation, discrimination, or any other form of judicial misconduct.² These non-merits allegations are therefore subject to dismissal as unsupported by evidence that would raise an inference that misconduct has

² It is unclear what Complainant means by the allegation that one of the Subject Judges lacks a “judicial bond.” Complainant does not explain this allegation and there is nothing in the record to support the claim that the Subject Judges require such a thing.

occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant's allegations of delay in Subject Judge I's ruling on the "motion to appeal" are meritless. "Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The motion in question was pending for approximately six months before it was resolved. As a factual matter, this is not a period constituting excessive delay. The claim is thus 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.

Based on the foregoing, these four complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). It is noted that Complainant previously filed two misconduct complaints. See J.C. Nos. 03-20-90031; 03-21-90060. Those complaints also were dismissed as merits-related, unsubstantiated, and frivolous. Because Complainant has now filed six complaints that have been determined to be merits-related, unsubstantiated, and frivolous, it appears that Complainant is engaged in abuse of the judicial misconduct complaint procedure. See Rule 10, Rules for Judicial-Conduct and

Judicial-Disability Proceedings.³ I therefore direct that a copy of this opinion be transmitted to the Judicial Council to consider whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act.

s/ Michael A. Chagares
Chief Judge

³ Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

(Filed: October 6, 2022)

PRESENT: CHAGARES, 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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Michael A. Chagares

Chief Judge

Dated: October 6, 2022