

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90085, 03-22-90098

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 3, 2023)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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 is a pro se plaintiff in a medical malpractice action before the Subject Judges. There has been a lengthy discovery dispute centered on the defendants’ ongoing

efforts to take Complainant's deposition. Subject Judge II recently recommended that the matter be dismissed sua sponte for noncompliance with court orders and discovery obligations. Complainant filed a response to the report and recommendation and also filed a motion for final judgment. These matters are currently before Subject Judge I.

Complainant has filed two lengthy complaints of judicial misconduct, along with voluminous exhibits including medical records and court documents, alleging that the two Subject Judges have engaged in misconduct in numerous respects. Complainant contends, among other things, that Subject Judge I "refus[ed] to correct errors" of Subject Judge II, is "us[ing] excessive force" against Complainant, and has "display[ed a] conflict of interest which puts danger to the life of [Complainant]." Complainant additionally claims that Subject Judge II should have recused from his case because, prior to becoming a Magistrate Judge, Subject Judge II worked as a United States Attorney and therefore is biased in favor of the defendants. Complainant alleges that Subject Judge II directed Complainant to appear for a deposition via Zoom "to use capture facial recognition of [Complainant] to kill [him]" and "engag[ed] in[] dishonesty, corruption and [s] a tool appointed by the district court to help the defendant."

Complainant also claims that, although he repeatedly complained about conduct by the defendants, the two Subject Judges "ignored" these issues. Complainant believes he is entitled to substantive relief in his civil case because the defendants have failed to refute his evidence, but alleges that the Subject Judges have not granted him that relief due to

their unethical conduct. Finally, Complainant alleges that both Subject Judges have engaged in deliberate delay in his case in a coordinated effort “to kill [him.]”

Many of Complainant’s allegations collaterally challenge decisions rendered by the Subject Judges in the course of Complainant’s civil proceeding. As such, the 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 filed a motion to recuse Subject Judge II based on the same alleged bias described in the misconduct complaint. Subject Judge I denied the recusal motion, concluding that it merely reflected discontent with Subject Judge II’s rulings. This administrative proceeding does not yield an alternative forum in which to seek review of that ruling. “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 subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Regarding Complainant’s claim of delay, Rule 4(b)(2) provides that “[c]ognizable 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. Complainant has not provided evidence of an improper motive on the part of the Subject Judges. The claim is therefore not cognizable as misconduct and is subject to dismissal on that basis. 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. Moreover, a review of the record reveals that the primary cause of delay in Complainant’s case stems from the difficulties between the parties in completing discovery, not any action on the part of the two Subject Judges. Accordingly, Complainant’s allegations are also 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.

Complainant’s remaining allegations are unsubstantiated. The record is entirely devoid of evidence that the Subject Judges have acted in a manner intended to physically harm or kill Complainant. Indeed, such allegations are “facially incredible [and] so lacking in indicia of reliability that no further inquiry is warranted.” The allegations therefore are subject to dismissal as frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, the complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ Michael A. Chagares
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90085, 03-22-90098

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: January 3, 2023)

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)(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: January 3, 2023