

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-24-90050, 03-24-90051, 03-24-90081

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 19, 2024)

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 filed a counseled civil rights action in 2022, which was assigned to a District Judge and was referred to Subject Judge II.¹ While discovery was ongoing in late 2023, the matter was reassigned to Subject Judge I. The matter was referred to a new Magistrate Judge several months later.² Subject Judge I recently granted summary judgment to the defendants and closed the case.

Complainant's first complaint of judicial misconduct alleges that, during the period in which Subject Judges I and II were both presiding over Complainant's case, their actions reflected bias, hostility, and abuse. Complainant alleges that, when Subject Judge I began participating in the case, Subject Judge II "started to act in a manner hostile and prejudicial to [Complainant's] case" and Subject Judge I "set up destroying [Complainant's] case before it could ever be heard on the merits." Complainant's second complaint of judicial misconduct alleges that Subject Judge I "gave us ridiculously rushed time frames to respond to dispositive motions and allowed the defendants extra time as a clear sign of bias against us and for the defendants" and that Subject Judge I intentionally delayed resolving the case.³

Among other things, Complainant alleges that Subject Judge II ruled on Complainant's sanctions motion without hearing argument, engaged in ex parte discussions with defense counsel, and "lied about discovery being complete."

¹ The originally presiding District Judge is not identified as a Subject Judge of this complaint.

² The new Magistrate Judge is not identified as a Subject Judge of this complaint.

³ The second complaint of misconduct was filed before Subject Judge I granted summary judgment to the defendants.

Complainant alleges that Subject Judge I declined to scold defense counsel for behaving in a rude and abusive manner, discussed “irrelevant” topics, “was unsure of” the meaning of the First Amendment, and treated Complaint with a “complete lack of courtesy.”

Complainant states that “the actions of [the Subject J]udges, taken cumulatively, leave an air of impropriety that should not be accepted in our society.” In support of the complaints, Complainant has provided transcripts of a telephone status conference before Subject Judge II and a hearing before Subject Judge I.

It is apparent that Complainant disagrees with many of the rulings rendered in this course of his civil rights action. Complainant alleges, for instance, that Subject Judge I ordered the “arbitrary dismissal with prejudice” of many of his claims and converted a motion to amend into a summary judgment motion, that Subject Judge II unfairly closed discovery, that no hearing was held on Complainant’s motion for sanctions, and that briefing deadlines were too short. Such disputes with judicial decision-making and case administration qualify as merits related and therefore 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.”). Complainant’s merits-related allegations are 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 allegation of delay due to bias is entirely groundless.⁴ The record reveals that there has been no period of unreasonable delay in Complainant’s case. Briefing on the parties’ cross-motions for summary judgment concluded in April 2024, and Subject Judge I rendered a dispositive ruling on those motions by early August. This simply is not an objectively excessive period. The delay claim is thus 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 claims of judicial misconduct are similarly unsubstantiated. The allegation that Subject Judge II engaged in improper “ex parte” discussions is meritless. The transcript of the status call that Complainant has provided shows that Complainant’s counsel did not timely appear for the call, and Subject Judge II proceeded to discuss the status of various motions with those attorneys who were present. Discussions with one party are permissible for scheduling or administrative purposes, see Canon 3(A)(4)(b), Code of Conduct for United States Judges,⁵ no substantive matters were addressed, and a transcript of the call was made available to Complainant and his

⁴ Delay generally does not constitute cognizable misconduct. “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.

⁵ The Code of Conduct is designed to provide guidance to judges but is not a set of disciplinary rules. “While the Code’s Canons are instructive, ultimately, the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils. . . .” Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

attorney. These circumstances do not constitute “engaging in improper ex parte communications with parties or counsel for one side in a case” as set forth in Rule 4(a)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The allegation is therefore subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The transcripts of the two proceedings do not substantiate Complainant’s claims of bias, hostile treatment, or any other form of judicial misconduct on the part of Subject Judge I or Subject Judge II. All remaining allegations are 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, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: August 19, 2024)

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: August 19, 2024