

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90059, 03-23-90060, 03-23-90061,
03-23-90088, 03-23-90092, 03-23-90093

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 5, 2023)

PRESENT: CHAGARES, Chief Judge.

These three 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 that follow, 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 frequent pro se litigant. Like the judicial misconduct complaints he has submitted in the past,¹ the three misconduct complaints addressed here relate to two civil rights lawsuits he filed in the District Court. The cases were previously assigned to other judges, but in May 2023 Subject Judge I reassigned the lawsuits to Subject Judges II and III. Since that time, the court appointed pro bono counsel to help Complainant prepare a fourth amended complaint in the first lawsuit, but at the time of this opinion, that counsel has a pending motion to withdraw from the representation.² No new amended complaint has been filed. In July, Complainant filed motions to change venue and for recusal of Subject Judges II and III from the two civil matters, and those motions were denied.

Complainant submitted the first judicial misconduct complaint (J.C. Nos. 03-23-90059, 03-23-90060, and 03-23-90061) on August 4, 2023, against Subject Judges I, II, and III. He claimed that the Subject Judges obstructed justice, that Subject Judge II cannot be impartial as a former state court judge when other state court judges are named defendants in the lawsuits, and that Subject Judges II and III neglected correspondence and violated a prior court order to appoint counsel in his other civil case. In September,

¹ Complainant's judicial misconduct complaints in J.C. Nos. 03-21-90014, 03-22-90046, 03-22-90047, 03-22-90048, 03-22-90049, and 03-22-90050 were dismissed as frivolous, unsubstantiated, and merits-related.

² In his submissions here, Complainant airs grievances about his attorney who is not a federal judge and therefore is not covered by the Judicial Conduct and Disability Act. 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Those concerns are not cognizable in section 351(a) proceedings, and they will not be addressed.

Complainant filed a second misconduct complaint (J.C. No. 03-23-90088) against Subject Judge II after Complainant's motions to recuse and for a change of venue were denied. In that submission, he contended that Subject Judge II's decisions denying the motions reflected bias and otherwise "lacked clarity, detailed reasoning, and explanation." Soon after that, Complainant submitted a third judicial misconduct complaint (J.C. Nos. 03-23-90092, 03-23-90093) against Subject Judges II and III, in which he echoed prior allegations of bias and conflict of interest, alleged "abusive or harassing behavior," and accused the judges of having "potential" ex parte communications with defendants.

Complainant named Subject Judge I in the first misconduct complaint, and the only allegation in that complaint to include Subject Judge I is the obstruction of justice ground.³ This "claim" was stated in the most general terms and Complainant provided no support for this broad contention. All of the documents Complainant submitted and highlighted on the District Court docket have been reviewed and there is nothing indicating that Subject Judge I obstructed justice. Accordingly, the complaint against Subject Judge I will be dismissed as unsubstantiated and frivolous. See 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 obstruction, bias, and "potential ex parte communications" claims asserted in all three misconduct complaints against Subject Judge II are largely based on

³ Complainant referenced Subject Judge I in his third misconduct complaint, but he did not name her as a responding judge. In any event, Complainant's allegation that Subject Judge I knew of a conflict and assigned Subject Judge II to the cases anyway is baseless and would be subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii).

his assertion that Subject Judge II's prior service as a judge on the state court creates a conflict of interest. However, the mere fact that Subject Judge II formerly served as a state trial court judge in one county when Complainant has named the chief justice of the state supreme court and state court judges from other counties as defendants in his lawsuits, does not establish the existence of a conflict. Complainant has provided no support for the allegation that Subject Judge II is biased, conflicted, or has engaged in improper communications with any parties, and his assertion is pure speculation. A review of the record reveals no such evidence. Complainant's unsubstantiated argument is frivolous and insufficient to raise an inference of misconduct, and it therefore cannot sustain his judicial misconduct complaints. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The balance of Complainant's assertions against Subject Judges II and III appears misdirected or plainly involves merits-related challenges. He claims to have been subjected to "abusive or harassing behavior" as a pro se litigant in his lawsuits because his second and third "well-prepared complaints" were "undermin[ed]," but the rulings on those complaints preceded the assignment of Subject Judges II and III to that lawsuit. He also complains that Subject Judges II and III have violated a court order by failing to appoint counsel in his second lawsuit, that they did not respond to correspondence Complainant sent soon after their assignment to the cases, and that the decisions Subject Judge II issued were "incoherent," "vague[]," and "suggest[] a potential 'rubber-stamping' approach." These concerns are clearly associated with the merits of his

lawsuits and are not cognizable in a judicial misconduct action. 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. To the extent that he questions the decisions of Subject Judges II and III not to recuse, those challenges would constitute non-cognizable merits-related claims. See 28 U.S.C. § 352(b)(1)(A)(ii); 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.”).

Consequently, the three complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). As mentioned in Footnote 1 above, Complainant’s prior complaints were dismissed as merits-related, unsubstantiated, and frivolous. He was strongly cautioned that continued filing of repetitive, harassing, or frivolous misconduct complaints could result in the imposition of restrictions pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See J.C. No. 03-22-90046. Complainant nonetheless filed these additional frivolous, unsupported, and non-cognizable complaints. Accordingly, a copy of this opinion will be transmitted to the Judicial Council for consideration of the issuance of an order to show cause why Complainant should not be restricted from filing further complaints pursuant to Rule 10(a).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: October 5, 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)(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 5, 2023