

22-90240-jm, 23-90036-jm, 23-90047-jm
January 29, 2024
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re

CHARGES OF JUDICIAL MISCONDUCT

Docket No. 22-90240-jm
23-90036-jm
23-90047-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

Between December 2022 and July 2023, the Complainant filed three complaints with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “Rules”), charging two district judges (“District Judge 1” and “District Judge 2”) and one magistrate judge (the “Magistrate Judge”) of this Circuit with misconduct.

BACKGROUND

The Complainant is a frequent litigant; the current complaints arise from separate but related district court proceedings. In 2021, the Complainant, representing himself, filed a lawsuit against the federal government under the Freedom of Information Act. The matter was assigned to District Judge 1, who in August 2021 transferred the matter to a neighboring district, where it was assigned to District Judge 2. Before the matter was transferred, the Complainant filed a complaint of judicial misconduct against District Judge 1, alleging, among other things, that District Judge 1 was involved in a conspiracy with various government agencies to stalk and harass the Complainant. That misconduct complaint was dismissed in February 2022.¹

The Complainant then filed another pro se lawsuit, which was assigned to District Judge 1. District Judge 1 granted the Complainant's motion to proceed *in forma pauperis*, and the Complainant then filed a "motion for issuance of summons." District Judge 1 denied that motion and directed the Complainant to file an amended complaint. The Complainant did so and filed another motion for the issuance of summonses, and District Judge 1, after giving the

¹ See 21-90032-jm.

Complainant another opportunity to amend, entered judgment dismissing the complaint for failure to state a claim.

Separately, the Complainant filed another lawsuit that has been assigned to the Magistrate Judge to preside over general pretrial matters. As relevant here, in April 2023, the Complainant filed an interlocutory appeal and a motion to proceed *in forma pauperis* on that appeal; the Magistrate Judge entered an order denying that motion.

Finally, District Judge 2 is presiding over the matter that was transferred from District Judge 1.

Misconduct complaint 22-90240, against District Judge 1, alleges that District Judge 1 denied the Complainant's motion to issue summonses in retaliation for the Complainant having filed the previous misconduct complaint. It also alleges that District Judge 1's rulings against him are part of a district-wide "pattern over time of egregious abuse of power targeting pro se parties," as well as "a pattern of partisan and/or government special treatment in appearances in this court district."

Misconduct complaint 23-90036, against the Magistrate Judge, alleges that the Magistrate Judge "knew or should have known that a magistrate judge has

no jurisdiction” to enter an order denying the Complainant *in forma pauperis* status for purposes of appeal.

Misconduct complaint 23-90047, against District Judge 2, alleges that District Judge 2 is part of a “criminal fraud collusion and embezzlement scheme,” in which District Judge 2, the FBI, and other entities are conspiring to kill the Complainant “for the purposes of profit via embezzlement against the U.S. Treasury . . . in the event I were to disappear i.e. be dead.”

DISCUSSION

The complaints are dismissed.

The allegation that the Magistrate Judge lacked jurisdiction to enter an order denying *in forma pauperis* status for purposes of appeal is a claim that the Magistrate Judge got it wrong, not that he engaged in misconduct. Accordingly, the allegation is dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”); 11(c)(1)(B). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s

decision or procedural ruling.” Rule 4 cmt. If the Complainant wishes to challenge the Magistrate Judge’s ruling, he may do so, to the extent the law allows, only through normal appellate procedures.

The allegation that District Judge 1 retaliated against the Complainant for filing a previous complaint of judicial misconduct is dismissed both as merits-related and as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). It is true that cognizable misconduct includes retaliating against complainants “for reporting or disclosing judicial misconduct or disability.” Rule 4(a)(4). Nonetheless, this allegation is dismissed because District Judge 1’s actions—denying a motion to issue summonses and dismissing a complaint—cannot, without more, reasonably be interpreted as retaliatory. A ruling for or against a party, without more, is not evidence of retaliatory motive. Moreover, the Complainant’s allegation, in essence, is that District Judge 1 erred by denying the motion and dismissing the complaint, but such a challenge can only be pursued, if at all, through normal appellate procedures.

The allegation that District Judge 1 is biased against pro se litigants is also dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D). The Complainant cites no evidence for this claim apart from rulings he regards as incorrect or unfavorable, and a general

allegation that the entire district court is biased against pro se litigants. A ruling for or against a party, without more, is not evidence of bias, and an unsupported and conclusory claim that every judge in the district is biased does not raise a credible inference of misconduct.

Finally, the conspiratorial allegations against District Judge 2—i.e., that District Judge 2 is part of a conspiracy the object of which is to murder the Complainant and profit from that murder—are unsupported and not credible, and as such are also dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(D); *see In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009) (“Rule 6(b) makes clear that the complaint must be more than a suggestion to a Chief Judge that, if [s]he opens an investigation and the investigating body looks hard enough in a particular direction, [s]he might uncover misconduct. It must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible”).

The Clerk is directed to transmit copies of this order to the Complainant, District Judge 1, District Judge 2, and the Magistrate Judge.