

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

March 24, 2021

Chief Judge Diane S. Sykes

Nos. 07-21-90010 & 07-21-90011

IN RE COMPLAINTS AGAINST TWO JUDGES:

MEMORANDUM

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–64, and raise misconduct allegations against two judges. For the reasons discussed below, the complaints will be dismissed.

The judges presided in separate civil cases in which the complainant was a defendant. The complaint alleges that one judge: (1) assisted the plaintiff in a “campaign of intimidation” via her rulings; (2) wrongly awarded attorneys’ fees to the plaintiff; (3) issued a writ of body attachment in furtherance of an “apparent vendetta[]”; (4) wrongly failed to recuse herself from the case; and (5) wrongly denied a motion to dismiss for lack of subject matter jurisdiction. The complaint alleges that the second judge: (1) assisted the plaintiff in a “campaign of intimidation” via his rulings; (2) wrongly failed to recuse himself from the case; and (3) engaged in ex parte communication when rescheduling a status hearing.

These allegations are directly related to the merits of the judges’ decisions or procedural rulings and are not a proper subject of a misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). “Any allegation that calls into question the correctness of an official action of a judge ... is merits related.” Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006).

Additionally, the allegation about ex parte communication does not support a misconduct complaint for a separate and independent reason. Only “improper” ex parte communications implicate the rules governing judicial conduct. See Rule 4(a)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Ex parte communication regarding a scheduling matter is acceptable if the content of the communication does not address substantive matters and if the judge reasonably believes that a party will not gain a procedural, substantive, or tactical advantage as a result. See, e.g., *Guide to Judiciary Policy*, Ch. 2, Canon

3(A)(4)(b). The complainant has not alleged that he suffered prejudice as a result of the rescheduled status date. The status hearing was set and then re-set on the same day, and a docket entry notified the parties that the scheduling change was made at plaintiff's counsel's request. No. 19-cv-3899, R. 79. Accordingly, the allegation regarding ex parte communication must be dismissed because it "lack[s] any factual foundation [and is] conclusively refuted by objective evidence." 28 U.S.C. § 352(b)(1)(B).

The complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(B).