

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-3084

DAVID HATCHIGIAN,
Appellant

v.

JOHN J. WHELAN, Esquire; GIBSON & PERKINS PC; PAUL FELLMAN, Esquire;
MICHAEL ALAN SIDDONS, Esquire; THE LAW OFFICES OF MICHAEL ALAN
SIDDONS; MARDINLY ENTERPRISES, LLC; DAVID MARDINLY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:25-cv-03551)
District Judge: Honorable Gerald A. McHugh

Submitted for Possible Summary Action, and on Appellee Whelan's Motion for
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

July 30, 2026

Before: KRAUSE, MATEY, and BOVE, *Circuit Judges*

(Opinion filed: August 31, 2026)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

David Hatchigian, proceeding pro se, appeals from the District Court's order granting the defendants' motions to dismiss. One of the appellees, Delaware County Court of Common Pleas Judge John J. Whelan, has moved for summary affirmance. Because Hatchigian's appeal does not present a substantial question, we grant that motion and will summarily affirm the District Court's judgment.

Hatchigian filed a state court action, seeking damages based on allegedly improper repairs to his vehicle. Following a bifurcated bench and jury trial in the Delaware County Court of Common Pleas, Judge Whelan entered judgment against Hatchigian. His appeals to the Pennsylvania Superior Court and his request for allowance of appeal to the Pennsylvania Supreme Court were unsuccessful.

Next, Hatchigian filed a complaint in the Court of Common Pleas of Philadelphia County. He named as defendants (1) Judge Whelan; (2) two lawyers who represented the defendants in the initial state court matter; (3) those lawyers' law firms; and (4) David Mardinly and his repair shop, Mardinly Enterprises, LLC. Liberally construed, the complaint raised claims under 42 U.S.C. § 1983 for due process violations and civil conspiracy, as well as state law claims for common law fraud and negligence. Hatchigian asserted that the negligence claim involved breach of duties, professional negligence, and negligent retention and supervision. Hatchigian sought damages, permanent injunctive relief, and attorney's fees. One of the lawyers and his law firm removed the action to the United States District Court for the Eastern District of Pennsylvania. Hatchigian moved

to remand the matter to state court on the ground that not all of the defendants had consented to removal, but the District Court denied his request. It also denied Hatchigian's motion for recusal. The defendants filed motions to dismiss, which the District Court granted. Hatchigian timely appealed.

We have jurisdiction under 28 U.S.C. § 1291. Our review of the District Court's decision to grant the motions to dismiss is plenary, *McGovern v. City of Phila.*, 554 F.3d 114, 115 (3d Cir. 2009), and we review the denial of a permanent injunction for an abuse of discretion. *See Doeblers' Pa. Hybrids, Inc. v. Doeblor*, 442 F.3d 812, 819 (3d Cir. 2006). We may take summary action if the appeal fails to present a substantial question. *See* 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

The District Court did not err in denying Hatchigian's motion to remand the matter to state court. *See Green v. America Online (AOL)*, 318 F.3d 465, 470 (3d Cir. 2003) (exercising plenary review over a district court's denial of a motion to remand). In moving to remand, Hatchigian argued that not all of the defendants had consented to removal. Removal of a civil action from state court to a district court generally requires unanimity among the defendants. *See Balazik v. County of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1995). But defendants who have not been properly served at the time the notice of removal is filed are not required to join the notice of removal or otherwise consent to removal. *See Lewis v. Rego Co.*, 757 F.2d 66, 68 (3d Cir. 1985). Here, the District Court properly concluded that service of the complaint on all defendants was defective because

it was not made by the Sheriff of Delaware County, as required by Pennsylvania Rule of Civil Procedure 400.1(a).

The complaint's due process claim centered on Hatchigian's allegation that, in the initial state court action, Judge Whelan failed to sanction the defendants when they did not respond to discovery, refused to recuse himself, dismissed Mardinly prior to trial, improperly granted a motion in limine, admitted the testimony of Mardinly and "surprise witness" Alex Zhekhov, and overruled his objections to Zhekhov's testimony. Judge Whelan took all these actions in his judicial capacity. Thus, the District Court properly held that Hatchigian's claims based on those actions are barred by judicial immunity.¹ *See Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (recognizing that judges are immune from suit for all judicial actions except those taken in the "clear absence of all jurisdiction"). Although "absolute judicial immunity extends only to claims for damages," *Larsen v. Senate of the Commonwealth*, 152 F.3d 240, 249 (3d Cir. 1998), "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." § 1983. Nothing in Hatchigian's complaint suggested that this exception applies. *See Azubuko v. Royal*, 443 F.3d 302, 303-04 (3d Cir. 2006) (per curiam). And, to the extent that Hatchigian speculated that Judge Whelan conspired with the defendants, he failed to state a claim. *See Young v.*

¹ In light of this determination, we will not address the District Court's alternative conclusion that the claims against Judge Whelan are barred by res judicata.

Kann, 926 F.2d 1396, 1405 n.16 (3d Cir. 1991) (explaining that conspiracy claims may not be based “merely upon . . . suspicion and speculation” and stating that general allegations of conspiracy not based on facts are conclusions of law that are insufficient to state a claim).

Hatchigian also asserted that opposing counsel acted negligently. But he provided virtually no facts to support that claim. Instead, he vaguely referred to a breach of duty, professional negligence, and negligent retention and supervision. “A cause of action in negligence requires a showing of four elements: (1) the defendant had a duty to conform to a certain standard of conduct; (2) the defendant breached that duty; (3) such breach caused the injury in question; and (4) the plaintiff incurred actual loss or damage.”

Pyeritz v. Commonwealth, 32 A.3d 687, 692 (Pa. 2011). Just as he did in a prior, similar action, *see Hatchigian v. Morris*, No. 22-3302, 2023 WL 6307747, at *2 (3d Cir. Sept. 28, 2023) (per curiam) (non-precedential), Hatchigian failed to plausibly allege that opposing counsel owed him any professional duties. *Cf. Kituskie v. Corbman*, 714 A.2d 1027, 1029 (Pa. 1998) (stating that legal malpractice claims require a plaintiff to demonstrate, inter alia, employment of the attorney or other basis for a duty). Unless “special circumstances” are present, “[t]he general rule is that an attorney will be held liable for negligence only to his client.” *Smith v. Griffiths*, 476 A.2d 22, 26 (Pa. Super. Ct. 1984). Hatchigian did not allege that this case presented a rare “special circumstance” such that opposing counsel could be held personally liable for negligence to him. He also failed to state a claim for negligent supervision or retention because he

did not identify a duty of care that opposing counsel owed to him in the course of representing an opposing party. *See Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 487-88 (3d Cir. 2013). Further, Hatchigian did not explain how opposing counsel acted outside of the scope of their employment during the state court proceedings. *See id.* at 489 (explaining that a claim for negligent supervision typically involves wrongful acts by employees that are “outside the scope of employment or not in furtherance of the principal’s business”) (citation omitted).

In his claim for common law fraud, Hatchigian asserted that the defendants made “intentional misrepresentation[s] meant to deceive the prior courts, and, as intended by the [d]efendants, the state trial court was actually deceived, causing [p]laintiff’s damages.” (ECF 1-2, at 22 of 27.) These allegations failed to state a claim, however, because Hatchigian did not describe or show what specific misrepresentations the defendants made and if or how he justifiably relied on them. *See Youndt v. First Nat’l Bank of Port Allegany*, 868 A.2d 539, 545 (Pa. Super. Ct. 2005) (describing the elements of common law fraud); *cf. Elia v. Erie Ins. Exch.*, 581 A.2d 209, 212 (Pa. Super. Ct. 1990) (rejecting plaintiff’s fraud claim that alleged only misrepresentations by the defendant to a third party).

Hatchigian also sought permanent injunctive relief to prevent the Mardinly defendants from “threaten[ing] [him] with future harassment and litigation in order to conceal their false statements in the course of defending the Underlying Action.” (ECF 1-2, at 22.) The District Court did not abuse its discretion in denying the request for a

permanent injunction because Hatchigian's allegation clearly failed to set forth with any specificity how he would be irreparably injured by the denial of injunctive relief. *See Shields v. Zuccarini*, 254 F.3d 476, 482 (3d Cir. 2001) (discussing factors to consider in deciding whether to grant a permanent injunction). In addition, the District Court properly denied Hatchigian's request for attorney's fees under 42 U.S.C. § 1988. *See Pitts v. Vaughn*, 679 F.2d 311, 313 (3d Cir. 1982) (holding that non-lawyer pro se litigant was not entitled to fees because the purpose of § 1988 is to enable litigants to obtain professional legal representation, not to provide an additional reward to pro se litigants).

Finally, the order denying Hatchigian's motion to recuse was not an abuse of discretion. *See Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1356 (3d Cir. 1990) (stating that an order denying a recusal motion is reviewed for abuse of discretion). Hatchigian argued that recusal was warranted because Judge McHugh had ruled against him in prior cases. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). And we reject Hatchigian's contention Judge McHugh was biased because he referred to him in the past as a "serial litigator." *See id.* at 550-51 (explaining that a judge's "knowledge [of a party] and the opinion it produced" during the course of the proceedings does not necessarily constitute bias).

For the foregoing reasons, we grant Judge Whelan's motion to summarily affirm and to be excused from filing a brief, and will affirm the District Court's judgment.