

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matters of	*	Nos.	04-15-90038
Judicial Complaints	*		04-15-90039
			04-15-90040
Under 28 U.S.C. § 351	*		04-15-90042

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a federal district judge and three federal circuit judges pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.* The Act provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability." 28 U.S.C. § 351(a).

Complainant references three civil rights actions that were dismissed by the district judge. In one case, summary judgment was entered for defendants. In the other two cases, the judge denied complainant leave to pay the filing fee in installments under the Prison Litigation Reform Act (PLRA), on the basis that

* The judicial complaint also names various state court judges, prison officials, and correctional officers, but the Judicial Conduct and Disability Act applies only to federal judges. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

three of complainant's prior actions had been dismissed as frivolous, malicious, or for failure to state a claim, and complainant had not made a showing that he was in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

On appeal of these actions, complainant was again denied leave to pay the filing fee in installments under the PLRA, based on 28 U.S.C. § 1915(g). Like the district judge, the three circuit judges found that three of complainant's prior actions had been dismissed as frivolous, malicious, or for failure to state a claim, and that he had not made a showing that he was in imminent danger of serious physical injury. The circuit judges also denied complainant's motion for reconsideration and his motion to transfer his cases to state court.

In his judicial complaints against the district judge and circuit judges, complainant accuses them of bias and prejudice requiring their recusal; contends that they have cost him time, money, and freedom; and claims they have denied him access to the courts.

Claims that are "[d]irectly related to the merits of a decision or procedural ruling" are not subject to review through a complaint of judicial misconduct or disability. 28 U.S.C. § 352(b)(1)(A)(ii). To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of

a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

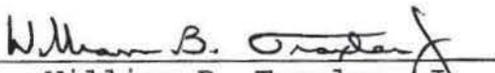
Misconduct may also be based upon a showing that the judge's ruling was motivated by racial or ethnic bias or other improper motive, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

The complainant's allegations of misconduct by the judges are directly related to the judges' decisions. Though objected to by complainant, the judges' decisions were consistent with, rather than a departure from, prevailing law. Complainant's claim that the judges were motivated by bias and prejudice is supported only by his disagreement with the judges' rulings and his speculation about their motives.

Complainant having failed to provide any evidence of misconduct, these judicial complaints are dismissed as merits-

related and lacking in factual support. 28 U.S.C.
§ 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge