

Complainant thereafter pursued multiple post-judgment challenges to his conviction and sentence, but his claims were rejected in the district court and on appeal.

Complainant alleges in his judicial complaint that the district judge who presided over his case demonstrated a deep-seated animus against him, that he ordered the prosecutor to amend the indictment, and that he violated complainant's right to be tried on an indictment returned by the grand jury. Complainant attaches a transcript of the following bench conference to support his allegations:

Prosecutor: [O]ne of the things [the witness] is going to testify is finding the pistol, Government's Exhibit 5A, at defendant's residence.

Now, we know this was the gun that was used in [a different bank robbery] that the Court has already excluded. I know the Court has ruled we can't get that in, but we know the defendant had that gun in his possession when he committed the two other robberies because he had it at 11:00 when he committed the first robbery, and he had it at 11:15, 11:30. So I would like to ask [the witness] about the gun, get the gun admitted.

Court: Then you're going to get into the other bank robberies.

Prosecutor: That's what we're asking.

Court: I'm going to sustain the objection. Let me just tell you one thing, this case is clearly one you don't need . . . there is absolutely no need to get to that. This is where I have fault. You push this stuff. It's the kind of thing that's going to get this case reversed if they want to reverse it, overkill. The gun is out. I'll reach the question if he testifies how far you can go on impeachment of him.

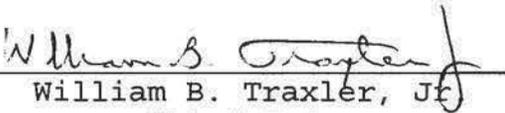
The Judicial Conduct and Disability Act excludes from its coverage allegations that are "[d]irectly related to the merits of a decision or procedural ruling." 28 U.S.C.

§ 352(b)(1)(A)(ii). Allegations that call into question the correctness of a judge's ruling are subject to dismissal as merits related except to the extent they allege the decision resulted from improper motive. Rule 3(h)(3), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Any claim of improper motive must be supported by sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(iii); see In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant's allegations that the judge has a deep-seated animus that caused him to order the prosecutor to amend the indictment and to violate complainant's right to be tried on a grand jury indictment are unsupported by the proffered transcript or by any other evidence presented by complainant. In refusing to allow the prosecutor to present evidence regarding the gun found in complainant's residence, the judge issued an evidentiary ruling favorable to complainant. The judge did not, as alleged by complainant, order the prosecutor to amend the indictment or violate complainant's right to be tried on an indictment returned by a grand jury.

Accordingly, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.


William B. Traxler, Jr.
Chief Judge