

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matters of	*	Nos.	04-15-90045
			04-15-90046
Judicial Complaints	*		04-15-90047
			04-14-90048
Under 28 U.S.C. § 351	*		04-15-90049

MEMORANDUM AND ORDER

Complainant brings these complaints against two federal district judges and three federal circuit judges pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.¹ 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).

Included in the definition of misconduct under the Judicial Conduct and Disability are such actions as using the judicial office to obtain special treatment for friends, accepting bribes, engaging in ex parte discussions, treating litigants in

¹ This order uses the last two digits of the judicial complaint number to distinguish among the named judges: circuit judge (45), circuit judge (46), circuit judge (47), district judge (48), and district judge (49).

a demonstrably egregious or hostile manner, engaging in partisan political activity, soliciting funds, or violating other mandatory standards of judicial conduct. Rule 3(h)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The 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). Conclusory allegations are subject to dismissal as frivolous under 28 U.S.C. § 352(b)(1)(A)(iii). See In re Doe, 2 F.3d 308 (8th Cir. 1993).

Complainant filed a complaint alleging copyright infringement, fraud, conspiracy, and other claims against a media company and 1-50 or more unnamed Does. District judge (48) dismissed the complaint based on res judicata grounds arising from numerous prior decisions in complainant's cases, and for failure to state a claim. The judge's opinion cited a

decision of the U.S. District Court for the District of Columbia, in which that court listed complainant's 23 prior complaints against film companies, publishing companies, actors, producers, directors, and others, all of which had been dismissed; found that sanctions and attorney's fees had failed to deter complainant's deplorable conduct in wrongly claiming entitlement to compensation for popular works of entertainment in which he had no involvement; and entered a pre-filing injunction against complainant. Finding complainant's continuing litigation to be as frivolous, vexatious, and nonsensical as his cases in the District of Columbia, district judge (48) also entered a pre-filing injunction against complainant. Complainant appealed, and the court of appeals affirmed the district judge's decision.²

In this judicial complaint, filed more than 12 years after district judge (48)'s decision, complainant alleges that district judge (48) had a financial interest in the outcome of the litigation and improperly allowed the defendant to file a false affidavit stating that it was not involved in the production of *Forrest Gump*, when, in fact, its parent company produced *Forrest Gump*. Complainant alleges in support of this

² The panel that decided complainant's appeal did not include the circuit judges named in these complaints.

claim that the judge had an interest in a bank loan. Since complainant does not allege how the bank loan had anything to do with complainant's case, this allegation of misconduct is frivolous. Complainant's allegation of misconduct based on a false affidavit is also frivolous. The judge did not prepare or file the challenged affidavit and, in fact, decided complainant's *Forrest Gump* claim on the basis of res judicata because complainant had previously brought the same claim against the defendant's corporate parent.

Complainant's claims against district judge (49) and circuit judges (45), (46), and (47) arise out of complainant's subsequent litigation in a different jurisdiction. Complainant again sued numerous entities and again alleged, among other claims, that media and entertainment companies stole his ideas for movie plots, popular songs, and magazine layouts. District judge (49) dismissed the complaint, noting that the facts and legal claims were virtually identical to those repeatedly dismissed by other courts, that they were frivolous, and that they appeared to be made for the purpose of harassing the defendants into agreeing to nuisance settlements. The judge also entered a pre-filing injunction against complainant.

Complainant appealed, and the court of appeals affirmed the district court.³

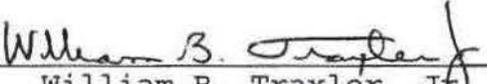
In these judicial complaints, filed five years later, complainant alleges that the judges engaged in misconduct by ruling on his case when they held stock in General Electric (GE).⁴ Complainant bases his claim on GE's corporate affiliation with a named defendant in the action. Complainant's complaint was, however, dismissed prior to service on the named defendant, the named defendant did not make any filings in the case, and GE was never identified as having any financial interest based on its affiliation with the named defendant. Failing to ascertain the existence of a potential financial conflict with the corporate affiliate of a defendant that never appeared in the case, based on an affiliation that was never placed on the record before the case was dismissed as frivolous, is not judicial misconduct.

³ The court of appeals affirmed the decision as to all defendants except a defendant in bankruptcy and subsequently dismissed the appeal as to the remaining defendant. Circuit judges (45) and (46) participated in both decisions. Circuit judge (47) participated only in the dismissal of the appeal as to the remaining defendant.

⁴ Although complainant alleges misconduct based on financial conflict against all four judges, two of the circuit judges do not appear to have held any GE stock.

Accordingly, these judicial complaints are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as failing to present facts that would support a claim of misconduct. Complainant's request that the undersigned recuse himself because he served on the Judicial Conference with one of the named judges is denied.

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge