

litigation, entered into a settlement agreement with counsel for defendants during a settlement conference conducted by the magistrate judge. Complainant subsequently sought to withdraw his agreement, and the defendants moved to enforce the agreement. The district judge initially denied the motion to enforce but subsequently reconsidered and granted the motion. Complainant did not appeal that decision.

Ten years later, complainant filed a series of motions to seal his case, citing difficulty in obtaining and keeping employment and attributing that difficulty to the fact that his case was available in the court's public records. The district judge denied the motions to seal, and complainant did not appeal that decision.

Complainant alleges in his judicial complaint that the district judge committed improprieties in his case, including:

- failing to investigate complainant's allegations that defense counsel tampered with and falsified depositions;
- engaging in ex parte communications with defense counsel;
- and
- treating complainant more harshly than defense counsel.

The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct; it does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling" cannot

be raised through a judicial misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the improper motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a charge must be supported by "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). Disagreement with the judge's rulings and speculation about the judge's motivation are inadequate to state a claim for judicial misconduct or disability. See In re Doe, 2 F.3d 308 (8th Cir. 1993).

Complainant's allegations fail to satisfy the standards established by the Judicial Conduct and Disability Act for judicial misconduct claims. The district judge was not required to investigate defense counsel based on complainant's objections to the accuracy of the deposition transcripts, and his failure

to do so was not "conduct prejudicial to the effective and expeditious administration of the business of the courts."

Complainant's claim of ex parte communication is based solely on speculation. Complainant theorizes that the defendants' decision to pay him for vacation hours and the judge's decision to reconsider the motion to enforce the settlement agreement are actions that would not have occurred without discussion between the judge and defense counsel.² Complainant's speculation notwithstanding, neither action gives rise to an inference that the judge and defense counsel engaged in ex parte communication.

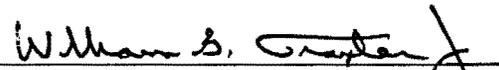
Complainant's allegation of unfair treatment also fails to support a finding of misconduct. Complainant alleges that he was not permitted to present argument during a teleconference, but control of the course of the teleconference was within the judge's authority, and any claim of error pertaining to the judge's exercise of discretion must be pursued through appeal rather than through a judicial complaint. The same is true of complainant's assertion that the judge treated him unfairly in denying his motion to seal based on the fact that the motion had

² Complainant also points out that the judge enforced the settlement agreement after having granted the defendants' motion for summary judgment. In fact, the judge's prior order did not grant summary judgment but instead granted the defendants' motion for leave to file their summary judgment reply brief.

not been served on defendants. In fact, the judge's order reflects that he carefully considered and rejected complainant's motion to seal under common law, the First Amendment, and the court's local rules, raising the absence of service as an additional point in a footnote to the order. Complainant could have challenged the judge's decision through appeal, but his claim that the order demonstrates unfair treatment amounting to judicial misconduct is without merit.

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

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge