

constitutional rights in retaliation for having been named as a defendant in complainant's civil rights action.

Misconduct, as defined under the Judicial Conduct and Disability Act, includes treating litigants "in a demonstrably egregious and hostile manner." Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings (Judicial Conduct Rules). Authorizing the seizure of an inmate's legal documents in retaliation for being named in a lawsuit would constitute misconduct under this definition.² Complainant must also, however, present "sufficient evidence to raise an inference" that such conduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii).

In determining what action to take on a complaint, the chief judge may conduct a limited inquiry into the claim by communicating, either personally or through a designee, with the complainant, the subject judge, and any others who may have knowledge of the matter. Judicial Conduct Rule 11(b). Pursuant to Rule 11(b), the clerk of court asked complainant to identify the prison official(s) who informed him that the seizure of his legal materials had been approved by the district judge. Complainant identified the officer who allegedly made the

² Complainant does not claim that the judge approved other violations allegedly committed by prison officers.

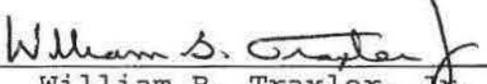
statement and an officer who was present and heard the statement.

The clerk then made inquiry pursuant to Rule 11(b) of the two officers. The officer who allegedly made the statement denied stating that the judge had approved the seizure. The officer who was present and allegedly heard the statement said that he did not hear anyone say the judge had approved the seizure, nor did he hear any other reference to the judge, during what he described as a routine security measure involving complainant. Both officers stated that they had no knowledge of the judge having approved the seizure.

As both officers have denied any statement that the judge approved the seizure and denied any knowledge of the seizure having been approved by the judge, complainant's allegation that the judge approved the seizure in retaliation for having been named in a lawsuit is "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred."

This complaint is, accordingly, dismissed pursuant to Judicial Complaint Rule 11(c)(1)(D) and 28 U.S.C. § 352(b)(1)(A)(iii).

IT IS SO ORDERED.


William B. Traxler, Jr.
Chief Judge