

complainant's petitions. The complaint was dismissed for failure to state claim on which relief can be granted and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Following the district court's denial of his motion for reconsideration, complainant filed a timely appeal, which is currently pending in the court of appeals.

Complainant also filed this judicial complaint against the district judge who decided his case, alleging that the judge:

- 1) improperly dismissed complainant's case;
- 2) is senile based on the decision rendered in complainant's case; and
- 3) failed to give reasons for the dismissal of complainant's case.

A judicial complaint that alleges only conduct "directly related to the merits of a decision or procedural ruling" does not allege misconduct within the meaning of the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(ii); see In re Memorandum of Decision, 517 F.3d 558, 561 (Jud. Conf. 2008). "The failure of a judge to give reasons for a decision is . . . a merits issue regarding that decision" and therefore not cognizable under the Act. 517 F.3d at 561.

To state a cognizable claim of misconduct relating to a judge's decision, the complainant must demonstrate that the judge has a "pattern and practice of arbitrarily and deliberately disregarding prevailing legal standards, 517 F.3d

at 562, or that the judge's "decision was the result of an improper motive," Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a showing cannot be made where the only support for the allegations is the merits of the judge's ruling. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

To state a claim based on disability, complainant must demonstrate that the judge suffers from a temporary or permanent condition rendering him "unable to discharge the duties of the particular judicial office." Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

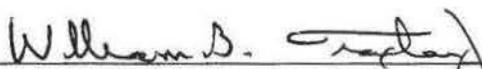
Complainant's allegations that the judge improperly dismissed his case and failed to provide reasons for the dismissal are directly related to the merits of the judge's decision. Complainant has not shown that the judge has a pattern or practice of arbitrarily or deliberately disregarding the law or that he had an improper motive for his decision. Complainant's challenges to the judge's decision are not cognizable under the Act and must, instead, be pursued through appeal.

Complainant's allegation that the judge is senile is based on the judge's reference to 28 U.S.C. § 1915(e)(2)(B)(i) in his dismissal order, which complainant maintains has no application because he had paid the filing fee and was not proceeding in

forma pauperis. Complainant's argument in this regard is a legal challenge that is properly raised on appeal from the judge's decision. The reference, even if error, does not support a claim that the judge is senile or unable to discharge the duties of office.

Accordingly, this judicial 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