



over complainant's objection and while complainant's prior judicial complaint was pending against the judge. Complainant further alleges that the district judge is part of a broad conspiracy to deny him access to the courts.

Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are "[d]irectly related to the merits of a decision or procedural ruling" are not subject to review through a complaint of judicial misconduct or disability. To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of an arbitrary and intentional departure from, or willful indifference to prevailing law." In re Memorandum of Decision, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008). A misconduct claim may also be based upon a showing that the judge ruled as he did as the result of illegal motive or conspiracy, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

Complainant's allegation that the judge interfered with the court's random assignment process in order to deny complainant a fair hearing lacks factual support. The district court's local rules require assignment of new cases, if possible, to the same

magistrate judge and district judge to whom a prior pro se case was assigned. Complainant's case was assigned in accordance with the court's local rules.

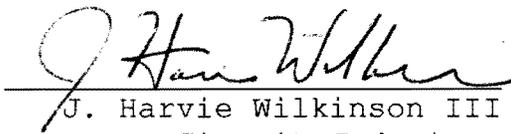
The record also reflects that complainant's case was assigned before complainant filed his earlier judicial complaint against the district judge and that the district judge did not take any action in complainant's case while the judicial complaint was pending. This is consistent with the advice given by the Judicial Conference Committee on Codes of Conduct. See Advisory Opinion 103 (Committee on Codes of Conduct June 2009) (unless there is a reasonable potential that the complaint will lead to adverse consequences, recusal is not required based on the filing of a judicial complaint—if feasible, it is preferable to await the Chief Judge's decision on the complaint).

Finally, the judge's failure to recuse himself as requested by complainant is an allegation that is directly related to the merits of the judge's rulings. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). The allegation may be pursued on appeal but is not the proper subject of a judicial complaint.

Accordingly, this complaint is dismissed as directly related to the merits of the judge's rulings and as lacking in

factual support for a claim of misconduct. 28 U.S.C.  
§ 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.

  
J. Harvie Wilkinson III  
Circuit Judge\*

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\* Acting pursuant to Rule 25(f), Rules for Judicial-Conduct  
and Judicial-Disability Proceedings.