



Complainant alleges in his judicial complaint that the district judge who presided over his case demonstrated bias and prejudice against him by:

- ordering the court reporter to omit a motion for mistrial made by his attorney after the judge overruled counsel's objection;
- vouching for a prosecution witness by nodding her head when the witness testified that his sentence was cut in half based on his truthful testimony against complainant; and
- stating at sentencing that she found a witness to be credible who had not testified at complainant's trial.

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 of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008). A misconduct claim may also be based upon a showing that the judge's rulings were motivated by racial or ethnic bias or other improper motive, 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 ordered the court reporter to alter the transcript is based upon his recall of what occurred at trial. Complainant's recollection of the proceedings does not justify an inference that the district judge had the transcript altered. The judge's alleged nodding of her head during a witness's testimony and reference to the credibility of a co-defendant who did not testify at complainant's trial likewise fail to support claims of judicial misconduct. These are allegations of judicial error that may be raised on appeal but that fail to establish willful indifference to prevailing law, bias, or judicial misconduct.

Accordingly, this judicial complaint is dismissed as merits-related and lacking in factual support. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.

  
William B. Traxler, Jr.  
Chief Judge