

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matters of	*	Nos.	04-15-90080
Judicial Complaints	*		04-15-90081
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

Complainant brings these judicial complaints alleging misconduct by a district judge and two magistrate judges in complainant's civil action.* The Judicial Conduct and Disability Act provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability." 28 U.S.C. § 351(a).

Following termination of his employment, complainant, by counsel, filed suit under Title VII and the Americans with Disabilities Act. The district judge dismissed the complaint, and complainant filed a pro se notice of appeal. The court of appeals affirmed in part, vacated in part, and remanded the case

* One magistrate judge named in the complaint has since passed away, and the other magistrate judge is now a district judge. Complaint numbers have been assigned for each of the two current district judges.

for further proceedings in the district court. Separate magistrate judges were assigned for settlement and discovery duties. New counsel entered an appearance on behalf of complainant.

Three days after an unsuccessful settlement conference, complainant delivered a letter to the district clerk for delivery to the district judge. The letter alleged fraudulent activities and professional misconduct by complainant's new attorney, including allegations that counsel falsified information, tampered with evidence and made false statements to defense counsel. Complainant claimed that all documents he submitted as evidence to his attorney were not submitted to defense counsel, and that his attorney's dishonesty made him look dishonest. Complainant further alleged that his attorney submitted a demand letter that was ridiculously high, embarrassing complainant during the settlement conference and defeating any potential for a reasonable settlement. The letter closed with a request that the district judge conduct a full investigation into the allegations and grant an enlargement of time in complainant's case until the investigation had been completed.

The district judge forwarded complainant's letter to the state bar, filed it under seal in complainant's case, and granted complainant's attorney leave to withdraw from further

representation. Complainant filed a motion objecting to counsel's withdrawal and seeking appointment of new counsel. The district judge denied the motion. A series of discovery disputes followed, culminating in a motion by defendants to dismiss the complaint based on complainant's failure to comply with discovery orders and a hearing to show cause why complainant should not be held in contempt.

Following careful consideration of the relevant factors, the magistrate judge recommended dismissal of the complaint. The district judge adopted the magistrate judge's recommendation over complainant's objections, and the court of appeals affirmed the district judge's decision.

Complainant alleges that the district judge, assisted in various respects by the magistrate judges, engaged in misconduct by:

- failing to conduct an investigation of complainant's attorney in response to complainant's letter detailing counsel's fraud and improprieties;
- filing the letter in complainant's case rather than conducting a separate investigation;
- sealing the letter and then violating the seal by forwarding the letter to the state bar;
- concealing counsel's misconduct;

- engaging in ex parte communication with a third party not associated with the case;
- denying complainant's procedural and due process rights;
- discriminating against complainant due to his disability;
- and
- not recusing himself from complainant's case.

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). 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), and cannot be based simply on dissatisfaction with the judges' decisions. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant's challenges to the judge's filing of complainant's letter, referral of the letter to the bar, and

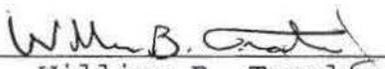
granting of counsel's motion to withdraw fail as claims of misconduct both because they are challenges to the judge's rulings and because the judge's handling of complainant's letter was proper in all respects. The record likewise fails to support complainant's allegations that the judge concealed attorney misconduct or engaged in improper ex parte communications.

Complainant has also failed to show that the judges denied him due process or discriminated against him based on his disability. The record reflects that complainant was afforded multiple opportunities to comply with the court's discovery orders but failed to do so. Complainant's attention deficit disorder did not require that counsel be appointed to represent him, and there is no showing that the judges discriminated against him based on his disability. Complainant's allegation that the judge should have recused himself is a merits-related challenge not properly pursued through a misconduct complaint. 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.")

Complainant's dissatisfaction with the judges' rulings and procedural handling of his case is not evidence of judicial

misconduct. These complaints are, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge