

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matter of	*	Nos.	04-15-90089
Judicial Complaints	*		04-15-90099
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a district judge pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. The 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).

Complainant filed two employment discrimination complaints against the city schools in 2014. The district judge denied leave to proceed in forma pauperis on the first complaint, noting that it was based on the same facts that were the subject of employment discrimination actions filed by complainant against the city schools in 2011 and 2013 and dismissed.* The

* Complainant appealed the dismissal of his 2011, 2013, and 2014 complaints. The court of appeals dismissed two appeals as untimely and affirmed the district court in the other appeal.

district judge also denied complainant's motion to proceed in forma pauperis in the second complaint filed against the city schools in 2014.

In 2015, complainant filed an employment discrimination complaint against a state university. The district judge granted complainant's motion to proceed in forma pauperis but denied his motion for appointment of counsel. The case remains pending in the district court.

Complainant has filed two judicial misconduct complaints against the district judge, alleging as follows:

- 1) The judge treated complainant in a demonstrably egregious and hostile manner by characterizing his filings as "fanciful," "frivolous," and "without merit," and by denying his motion to proceed in forma pauperis in an attempt to hinder due process of law;
- 2) The terminology used by the judge in prior orders was repeated by defense counsel in their responsive pleadings, and while ex parte discussions may or may not have occurred, the language used was the same;
- 3) The judge discriminated against complainant due to his financial status;
- 4) The judge denied complainant's motions for counsel and trial by jury, putting him at a disadvantage in litigating his 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). Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

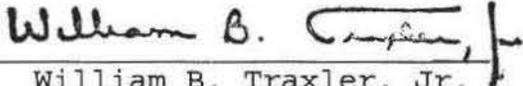
Misconduct may be based upon an allegation that the judge has treated litigants in a "demonstrably egregious and hostile manner," Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings, but such an allegation may not be based on comments that are directly related to the judge's ruling. See In re Lauer, 788 F.2d 135, 138 (8th Cir. 1985). Misconduct may also be based upon "having improper discussions with parties or counsel for one side in a case," Rule 3(h)(1)(C), but such an allegation 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 disagreement with the judge's denial of his motions for in forma pauperis status, appointment of counsel, and trial by jury is not evidence of discrimination or misconduct and may not be pursued through a judicial complaint. See In re Doe, 640 F.3d 869, 873 (8th Cir. 2011). His allegation of egregious and hostile treatment fails to state a claim of misconduct because the judge's characterization of complainant's claims as fanciful, frivolous, and without merit was directly related to the judge's decision on the claims. Complainant's allegation that defense counsel used the same terminology previously used by the judge is not evidence of ex parte discussions or other misconduct.

Accordingly, these judicial complaints are dismissed as directly related to the merits of the judge's decisions 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.



William B. Traxler, Jr.
Chief Judge