

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matter of	*	Nos.	04-15-90090
Judicial Complaints	*		04-15-90091
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a district judge and a magistrate 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 a civil complaint in the district court, along with an application to proceed in forma pauperis. The district judge found the complaint contained no cognizable claim

* Complainant identified the district judge, by name, as a subject of the judicial complaint and also identified the magistrate judge, by initials, as a subject of the complaint. The facts alleged by complainant relate only to the district judge and pertain to a civil action in which the magistrate judge had no involvement. Since no allegations of misconduct are actually made against the magistrate judge, the complaint, as to the magistrate judge, is subject to dismissal as not in conformity with § 351(a). See 28 U.S.C. § 352(b)(1)(A)(i).

for relief and was frivolous. The judge accordingly dismissed the complaint and denied complainant's application to proceed in forma pauperis as moot. An appeal to the court of appeals has been filed and is currently pending.

Complainant makes the following allegations in his judicial complaint:

- The order entered by the judge was mailed directly to the complainant from chambers without filing it with the clerk of court;
- The judge did not notify the court of appeals that she had denied complainant's application to proceed in forma pauperis;
- The judge acted as counsel by stating in her order that no cognizable claim for relief was stated in the complaint; and
- The judge showed bias and prejudice against complainant by referencing an appeal in the United States Court of Federal Claims.

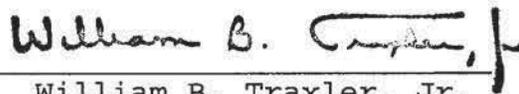
The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct; it does not permit review of a judge's decisions. Allegations that are "[d]irectly related to the merits of a decision or procedural ruling" cannot be raised through a judicial misconduct complaint. 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).

Complainant has failed to present, and the record does not disclose, any evidence of improper motive. The records reflect that the judge carried out her charge to review and decide the cases under the applicable law. Complainant's disagreement with the decision, with the notification or format of the order, or with the reasoning provided by the judge for dismissing his case is not evidence that the judge was engaged in misconduct or prompted by ill motive.

As complainant has failed to state a claim of misconduct as to either the district judge or the magistrate judge, these complaints are, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii) & (iii).

IT IS SO ORDERED.


William B. Traxler, Jr.
Chief Judge