

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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| In the Matter of a | * | |
| Judicial Complaint | * | No. 04-15-90092 |
| Under 28 U.S.C. § 351 | * | |

MEMORANDUM AND ORDER

Complainant brings this judicial complaint 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, a federal prisoner, filed suit in district court against his former attorneys, alleging that they conspired under 42 U.S.C. § 1985 to violate his right to equal protection and that they engaged in malpractice and fraud. Following initial screening, the magistrate judge summarized the complaint as follows:

Plaintiff does not appear to state any viable claim for relief under § 1985. Plaintiff attempts to set out a claim against his former attorneys for conspiring to violate his civil rights. He alleges that he learned

that federal and state authorities were investigating his involvement in a heroin distribution ring. He then hired Defendants to represent him in an attempt to avoid being charged. They negotiated an immunity agreement and arranged for Plaintiff to meet with authorities. Nevertheless, federal authorities indicted and convicted Plaintiff using, he alleges, information that he provided. He contends that his attorneys negotiated and advised him to accept an inadequate immunity agreement. Based on those facts, he asserts that Defendants conspired with the government to prosecute him. He also concludes without explanation that they treated him differently from other clients and that they did so based on his ethnicity. Plaintiff's allegations that Defendants treated him differently based on his ethnicity are entirely conclusory and not supported by a single factual allegation in the Complaint. Plaintiff points to no similarly situated clients and sets out no facts demonstrating racial or ethnic animus on the part of Defendants. Plaintiff's claim appears to be a transparent attempt to turn a routine state court legal malpractice and fee dispute into a federal conspiracy case. In fact, Plaintiff also sets out state law claims for legal malpractice and fraud, which he may pursue in the state courts if he chooses. However, he currently states no federal cause of action that would justify retaining those claims in this Court and it appears unlikely that he can ever do so.

The magistrate judge recommended that the case be dismissed without prejudice to filing, on § 1983 forms in federal court, a complaint in compliance with Fed. R. Civ. P. 8 or to filing the state law claims in state court.

Complainant objected that his complaint was not subject to screening under 28 U.S.C. § 1915A(a) because it did not seek redress from a governmental entity and that he should not be required to refile his § 1985 complaint on § 1983 forms that

have no application to his case. The district judge adopted the magistrate judge's recommendation and dismissed the complaint without prejudice. The judge specifically noted in an amended order the conclusory nature of complainant's § 1985 allegations and that the information required by the § 1983 forms could also be required for a § 1985 filing. Complainant has appealed the district judge's decision to the court of appeals, where the case is currently pending.

Complainant alleges in his judicial complaint that the district judge erred in dismissing his complaint. He contends, on this basis, that the district judge must be suffering from a disability or engaged in a conspiracy with the magistrate judge to deny complainant access to the courts by preventing the timely filing of his complaint.

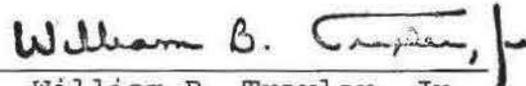
Disability is defined under the Judicial Conduct and Disability Act as "a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office." Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Misconduct, as defined under the Act, does not include allegations that are "directly related to the merits of a decision or procedural ruling." Rule 3(h)(3)(A). An allegation that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," is reviewable under the Act, but only to

the extent it challenges the improper motive as opposed to the decision itself. Rule 3(h)(3)(A). 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 that the judge suffers from a disability or is engaged in a conspiracy. The record reflects that the judge carried out his charge to review and decide the case under the applicable law. Complainant's disagreement with the decision is not evidence of misconduct or disability.

This complaint is, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge