

threatening and inappropriate ex parte communication with complainant's business attorney.

Complainant further alleges that the judge authorized service of the summons and complaint on him via email and communicated with him via email to notify him of scheduled hearings and send him copies of orders. According to complainant, the judge did not contact him out of courtesy but to ensure that he could not attack adverse rulings based on lack of notice, and that such communication was inappropriate.

Complainant further alleges that he believes the judge engaged in ex parte communication with opposing counsel to accommodate her scheduling needs and that such communication was inappropriate.

In addition, complainant alleges that the judge issued 70 ex parte writs for pre-judgment attachment of assets. After service of the writs, complainant moved to vacate the pre-judgment attachments, but that motion was denied without prejudice until such time as complainant surrendered to custody under an arrest warrant issued for civil contempt.

Further, complainant alleges that the judge's pre-judgment attachment order exaggerated the value of plaintiff's claim and failed to require a sufficient bond.

Finally, complainant alleges that the judge's refusal to permit complainant to file any motions in the case until he surrendered to face his civil contempt charge violates his right of access to the courts.

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). A claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct" is reviewable, but only to the extent of challenging the improper motive or conduct as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Allegations of improper conduct or motive with respect to a decision or ruling "must be dismissed as merits-related when the only support for the allegation of bad acts or motive is the merits of the judge's rulings." In re Doe, 640 F.3d 869, 873 (8th Cir. 2011). To avoid dismissal, the complaint must present "sufficient evidence to raise an inference that misconduct has occurred." See 28 U.S.C. § 352(b)(1)(A)(iii).

Complainant's allegations that the judge engaged in misconduct through ex parte communication with complainant's business attorney; through ex parte communication with opposing

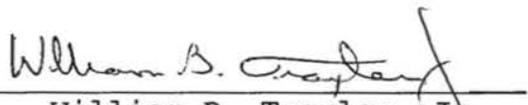
counsel; and through ex parte pre-judgment attachment of complainant's assets fail to state a claim of misconduct. A judge may, when circumstances require, "permit ex parte communication for scheduling, administrative, or emergency purposes," provided the communication does not address substantive matters and the judge reasonably believes that no party will gain an advantage. Canon 3(A)(4)(b), Code of Conduct for United States Judges. The alleged communication with complainant's business attorney was to secure complainant's presence at an emergency hearing, and the alleged communication with opposing counsel was for scheduling purposes. The pre-judgment attachment writs were granted ex parte but, upon service, complainant was able to, and did, challenge the attachments. The judge's decision to issue the writs ex parte is a judicial decision not subject to challenge through a misconduct complaint.

Complainant's allegations that the judge improperly authorized service by email; over-valued plaintiff's claim and under-valued the bond required for the pre-judgment attachments; and barred consideration of any motions from complainant until he appeared in court to face the civil contempt charge are all challenges that are directly related to the merits of the judge's rulings. Complainant has offered no evidence, apart

from his disagreement with the judge's rulings, to suggest that the judge acted out of bias or prejudice. The record in complainant's case also fails to support a claim of improper motive or conduct.

Accordingly, this judicial complaint is dismissed as directly related to the merits of the judge's rulings and as lacking in factual support for a showing of misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge