

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of	*	Nos. 04-15-90166
		04-15-90167
		04-15-90168
Judicial Complaints	*	04-15-90169
		04-15-90170
		04-15-90171
Under 28 U.S.C. § 351	*	04-15-90172
		04-15-90173
		04-15-90174
		04-15-90175
		04-15-90176
		04-15-90177
		04-15-90178
		04-15-90179
		04-15-90180
		04-15-90181
		04-15-90182
		04-15-90183

MEMORANDUM AND ORDER

Complainant brings these judicial complaints pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, against sixteen circuit judges, a chief district judge, and a district judge. The complaints identify ten prior civil actions and appeals in which complainant alleges the judges engaged in misconduct by failing to consider his claims fairly and impartially.

Two of complainant's prior actions were filed under the Federal Tort Claims Act (FTCA) and sought damages from the government based on alleged tortious and illegal conduct by the chief district judge (in one FTCA case) and fifteen circuit judges (in the other FTCA case). Filed against the United States, the FTCA actions alleged that the judges' grossly negligent rulings in prior

cases facilitated violations of his constitutional rights by federal and state officials. Both FTCA complaints were assigned to the district judge who is now named in these judicial complaints. The district judge dismissed the complaints on the basis of judicial and sovereign immunity, and those decisions were affirmed on appeal.

Complainant's appeal in the FTCA case involving the circuit judges was initially assigned to a random panel of judges. After affirming the district judge's decision, the panel sua sponte granted rehearing, vacated its decision, and recused itself. The appeal was then assigned to two new members of the court who were not mentioned in the FTCA complaint and to a district judge sitting by designation. The new panel entered a decision affirming the district court's dismissal of the FTCA action.

In complainant's judicial complaint filings, he first alleges that the named circuit judges are precluded from reviewing his complaints. He next alleges that the circuit and district judges exhibited gross negligence in deciding his civil actions, appeals, and petitions for rehearing en banc, thereby showing a reckless disregard for their legal duty. He further alleges that the judges participated in an ongoing conspiracy to violate his constitutional rights through illegal wiretapping, monitoring, and psychological operations. Complainant points to alleged encounters with the chief district judge at Office Depot and with one of the circuit judges at Barnes & Noble as evidence that the judges are tracking him.

Finally, complainant alleges that the judges should have recused themselves from his FTCA actions because they could not act impartially on claims involving their judicial colleagues.

The Judicial Conduct and Disability Act establishes an administrative remedy for judicial misconduct or disability. The procedure "is not designed as a substitute for, or supplement to, appeals or motions for reconsideration." In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. Comm. on Judicial Conduct and Disability 2008). Allegations that are "[d]irectly related to the merits of a decision or procedural ruling" are subject to dismissal under the Act. 28 U.S.C. § 352(b)(1)(A)(ii). If, however, the complainant demonstrates "clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law," 517 F.3d at 562, or evidence that the judge's rulings were the result of "a bribe, ex parte contact, racial or ethnic bias, or improper conduct," Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings, a claim may be brought under the Act.

The complainant must present "sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). If "the only support for the allegation of bad acts or motive is the merits of the judge's ruling," the complaint must be dismissed. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Judicial misconduct complaints are assigned to the chief judge of the circuit for review. 28 U.S.C. § 352(a). However, a judge who is the subject of a judicial complaint is disqualified from acting on the complaint except to the extent provided by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Rule 25(b). If the chief judge is disqualified, the duties of the chief judge are assigned to the most-senior active circuit judge not disqualified. Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's claim that the named circuit judges are precluded from acting on these complaints is consistent with the Rules for Judicial-Conduct and Judicial-Disability Proceedings. In accordance with Rule 25(f), the complaints have been assigned for review by the most-senior active circuit judge who was not named in the complaints and is not otherwise disqualified.

Review of the underlying records in complainant's cases establishes that the judges' decisions were in accord with prevailing law and that complainant's allegations of deliberate indifference to prevailing law are without factual support. Complainant's allegation that the judges were involved in a conspiracy to violate his constitutional rights through illegal wiretapping, monitoring, and psychological operations is likewise lacking in factual support. Complainant's alleged encounters with two of the judges do not give rise to an inference that the judges were monitoring his movements or otherwise conspiring against him.

Complainant's allegations that the judges could not remain impartial and should have recused themselves also fail to establish misconduct. Under 28 U.S.C. § 455 and Canon 3C(1) of the Code of Conduct for United States Judges, a judge is required to recuse if he or she is a party to the case. Although the judges were not named parties in complainant's FTCA actions, the complaint allegations focused on their decisions. Accordingly, the chief district judge recused herself, and the case was assigned to a new district judge. In complainant's FTCA challenge to appellate decisions, the panel initially assigned to the appeal also recused itself, and a new panel, free of any judges mentioned in the complaint, was assigned to the appeal.

Accordingly, complainant's FTCA actions and appeals were decided by judges whose prior decisions were not at issue in the FTCA complaints. Complainant alleges, however, that other judges of the court were also required to recuse themselves because they could not be impartial in a case involving their colleagues' actions, particularly where the chief judge was one of those colleagues.

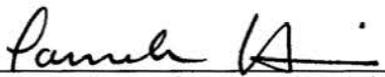
Contrary to complainant's views, Advisory Opinion 103 (U.S. Jud. Conf. Comm. on Codes of Conduct 2009), provides:

If one or more of an assigned judge's judicial colleagues - but not the assigned judge - is named as a defendant in a civil action, the assigned judge need not automatically recuse from the case. This situation is governed by Canon 3C(1)'s general admonition against presiding over cases in which "the judge's impartiality might reasonably be questioned."

Guide to Judiciary Policy, Vol. 2, Ch. 2, Published Advisory Opinions, at 103-2. The Advisory Opinion goes on to state that litigation in which judicial immunity is plainly applicable ordinarily does not provide a reasonable basis for questioning the impartiality of a judge on the same court, and that disqualification is rarely appropriate in this situation. Id. Judicial and sovereign immunity were plainly applicable in complainant's cases, and there is no reasonable basis for questioning the impartiality of the judges who ruled on complainant's FTCA actions and appeals.

Complainant's allegations that the judges were grossly negligent, conspiring against him, or biased are directly related to the merits of the judges' rulings and lacking in factual support for a showing of misconduct. These complaints are, accordingly, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



Pamela A. Harris
Circuit Judge