

FILED

DEC 30 2015
U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of	*	Nos.	04-15-90192
Judicial Complaints	*		04-15-90193
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 state court, which was removed to federal court based on the diversity of the parties. The magistrate judge recommended that the defendant's motion for summary judgment be granted, and the district judge adopted the magistrate judge's recommendation and granted the motion for summary judgment. Complainant filed a post-judgment motion to seal her case, which the district court denied.

Complainant appealed to the court of appeals. The court of appeals dismissed complainant's appeal as to the entry of summary judgment because her notice of appeal was untimely and she did not request an extension of the appeal period within the time allowed by the rules. Complainant's notice of appeal was timely filed from the order denying her motion to seal, and the court of appeals affirmed the district court with respect to that order.

Complainant alleges in her judicial complaint that her social security number should be protected from disclosure under Fed. R. Civ. P. 5.2, but that the district court has not sealed documents containing the number that were initially filed by complainant in state court and removed to federal court by defense counsel.* Complainant further alleges that her identity as a whistleblower should be protected by sealing her case and that the district court should reopen her appeal period to enable her to file a timely appeal.

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

* Complainant recently filed a motion to reopen case and for redaction of confidential information in district court.

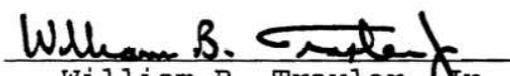
be raised through a judicial misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii). The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the 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's disagreement with the denial of her motion to seal and with the failure to reopen her case to allow her to file a timely appeal is not evidence of improper motive. Her motion for redaction has only recently been filed and not yet been acted on by the judges. Complainant has failed to present, and the record does not disclose, any evidence of improper acts or motive on the part of the judges. See In re Doe, 640 F.3d 869, 873 (8th Cir. 2011) (judicial complaint allegations must be dismissed as merits-related where the only support for the allegations of bad acts or motive is the merits of the judge's rulings).

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)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge