

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

In the Matter of a *

No. 04-16-90020

Judicial Complaint *

Under 28 U.S.C. § 351 *

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a federal 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 filed an employment discrimination action in district court alleging claims of racial discrimination, retaliation, and harassment. Complainant alleges that the district judge granted counsel's motion to compel additional deposition testimony even though counsel was untruthful in the motion and even though the questions counsel wished to ask were about a related state court action and irrelevant to her federal

case. Complainant alleges that the judge is holding her to a different, higher standard than opposing counsel.

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). Allowing judicial decisions to be challenged through misconduct proceedings "would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." In re Memorandum of Decision, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

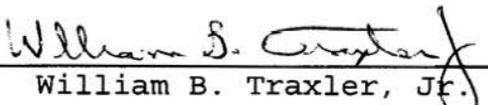
The judicial complaint procedures permit review of a claim that a judicial decision is "the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias," but only to the extent of challenging the improper motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct 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 perception that she is being held to a higher standard than counsel or that the judge is, in any other way, demonstrating bias against her is not supported by the record in

her case. Where, as here, a complaint of misconduct is based solely on the merits of the judge's ruling, the complaint must be dismissed as merits-related. See In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

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