

1. failed to treat both sides equally and respectfully throughout the litigation;
2. dismissed complainant's case with prejudice and with verbal vitriol;
3. was biased against complainant because (as the judge stated at a motions hearing) a pro se party had never succeeded in having one of his decisions vacated;
4. denied complainant's motions and granted defendants relief to which they were entitled;
5. engaged in ex parte communication;
6. failed to act on the case for five months after all documents had been filed.

The Judicial Conduct and Disability Act excludes from its coverage allegations that are "[d]irectly related to the merits of a decision or procedural ruling." 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 conduct or motive as opposed to the decision itself. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a claim must be supported by "sufficient evidence to raise an

inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii). "When the only support for the allegation of bad acts or motive is the merits of the judge's rulings," the complaint must be dismissed as merits related. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

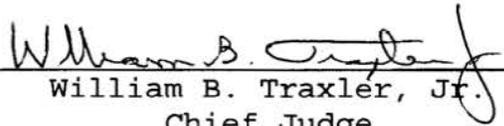
Complainant's allegations of unequal, disrespectful, and biased treatment find no support in the record in his case. Complainant's allegation that the judge's rulings were motivated by a biased desire to benefit the defendants is based solely on complainant's disagreement with the rulings -- grounds insufficient for a misconduct claim. The judge's initial dismissal order was not vitriolic, and his statement that a pro se party had not previously succeeded in having a decision vacated was neither disrespectful nor suggestive of bias. Complainant's allegation of ex parte communication also fails because the ex parte contact was for the purpose of scheduling a teleconference, in which all parties participated, on defendants' motion for sanctions.¹ See Canon 3(A)(4)(b) (ex parte communication is permitted for scheduling purposes so long as it does not address substantive matters or offer one side an

¹ Complainant alleges that there was communication during the scheduling call about the provisions under which the motion for sanctions was filed, making the conversation substantive. Since the provisions under which the motion was filed are reflected in the motion itself, this alleged reference did not turn the communication into one on substantive matters.

advantage). Finally, the fact that the case was pending with the judge for five months prior to decision is not evidence of bias or misconduct.

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

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge