

antagonistic towards his efforts to protect his constitutional rights and that the judge engaged in improper ex parte communication with opposing counsel. As evidence of these claims, complainant alleges that the judge permitted the defendant to violate the discovery rules; denied complainant's motion for sanctions; held complainant to a higher standard than the defendant; harshly criticized complainant's motion for an extension of the appeal period; failed to notify complainant of her order directing the defendant to respond to complainant's motion to extend the appeal period; and considered the defendant's response even though complainant had not received a copy.

The Judicial Conduct and Disability Act excludes from its coverage allegations that are "directly 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). Relevant language used by the judge in ruling on a case is also "presumptively merits-related and excluded from coverage under the Act, absent evidence apart from the ruling itself suggesting an improper motive." See Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings, at 6.

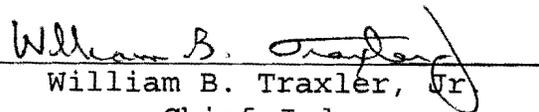
Careful review of the complaint allegations and the record in complainant's case fails to support complainant's claim that the judge's rulings were motivated by bias or prejudice. The merits of the judge's rulings denying complainant's motion for sanctions, granting the defendant's motion for summary judgment, and denying complainant's motion for an extension of the appeal period are not subject to review through a judicial complaint. Complainant's claims that the language denying an extension of the appeal period was overly harsh and that the judge held complainant to a higher standard than the defendant are also directly related to the merits of the rulings and not subject to

review under the Act. Complainant has presented no evidence of bad acts or motives apart from his challenges to the rulings themselves.

Complainant's allegations that he was not served with a copy of the judge's order directing a response or with the defendant's response to his motion for extension also fail to establish judicial misconduct. The clerk, not the judge, is responsible for service of court orders, and the filing party is responsible for service of pleadings. The defects in service alleged by complainant did not constitute misconduct on the part of the judge.

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