

FILED: May 27, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a
Judicial Complaint
Under 28 U.S.C. § 351

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No. 04-16-90046

MEMORANDUM AND ORDER

Complainant brings this judicial complaint against a circuit judge pursuant to 28 U.S.C. § 351(a), which 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."

Complainant filed a petition for writ of mandamus in the court of appeals. The circuit judge was one member of a three-judge panel that denied the petition.

In his complaint, complainant alleges that, in denying complainant's petition for mandamus relief, the circuit judge engaged in judicial misconduct by (1) failing to recuse himself and by (2) disrespecting presidential pardons that declared

complainant's innocence, approved his benefits, and reinstated his federal employment.

Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are "directly related to the merits of a decision or procedural ruling" are not subject to review through a complaint of judicial misconduct or disability. To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of an arbitrary and intentional departure from, or willful indifference to prevailing law." In re Memorandum of Decision, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008).

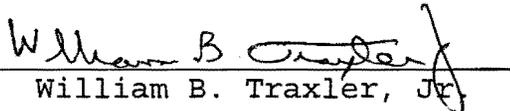
Misconduct may also be based upon a showing that there was an improper motive for the judge's rulings, but the claim must be supported by sufficient evidence to raise an inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; In re Doe, 2 F.3d 308 (8th Cir. 1993) (judicial complaint process may not be used to pursue speculative claims).

Complainant has failed to present any evidence of willful indifference to prevailing law, improper motive, or other misconduct. The judge was not required to recuse himself simply because he has the same last name as others mentioned in complainant's judicial complaint. The record reveals no willful

indifference to prevailing law or improper motive for the judge's ruling.

Accordingly, this judicial complaint is dismissed as merits-related, lacking in factual support, and frivolous. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge