

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In the Matter of a *

No. 04-16-90052

Judicial Complaint *

Under 28 U.S.C. § 351 *

MEMORANDUM AND ORDER

Complainant brings this judicial complaint pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, against a district judge. The Act provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for inability to "discharge all the duties of office by reason of mental or physical disability." 28 U.S.C. § 351(a).

Complainant, a litigant in several civil actions assigned to the district judge, alleges that the judge has repeatedly demonstrated bias against him and subjected him to malicious treatment, discrimination, and retaliation. Complainant alleges that some of the defendants in his cases appear to be good friends with the judge and therefore receive favorable rulings. Complainant asks that his cases be reassigned to a judge who does not have close ties to the defendants or their attorneys. Complainant details the following allegations of judicial misconduct in his cases:

- In a civil action removed by complainant from state court, the district judge allegedly ignored the evidence and issued a flawed opinion remanding the case to state court in a suspicious manner. When complainant filed a motion to reopen the case, the motion was denied and his documents were not entered into the ECF system.
- In another action, the judge allegedly requested defense counsel to present their fees despite the pendency of related cases. The judge barred complainant from filing briefs and exhibits in excess of 50 pages and delayed mailing orders to complainant. When complainant complained about delayed receipt of the orders, the judge extended the time for complainant to respond, but subsequently delayed the mailing of another order to complainant.
- In a civil action in which complainant notified the judge of illegal activity by the other side, the judge directed his bias against complainant instead of admonishing the defense. In addition, after granting complainant leave to file a surreply, the judge ignored complainant's arguments and issued a flawed opinion dismissing the case based on res judicata.
- The judge should have recused himself after an attorney who teaches at the same law school as the judge entered an appearance in one of the cases.

The Judicial Conduct and Disability Act does not permit review of claims that are "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii). See Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related.") To avoid the merits-related bar, a misconduct claim must contain "clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that 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 the judge's ruling was motivated by racial or ethnic bias or other improper motive, 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. Such a showing cannot be made where the only support for the allegations is the merits of the judge's ruling. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

The records in complainant's cases support a finding that the judge's decisions were based upon a conscientious application of the law and not the result of bias, prejudice, favoritism, or indifference to the law. The records also establish the reasonableness of the limitations imposed on complainant's filings

and belie any suggestion that they were the result of bias against complainant. Complainant's objections to the judge's decisions and his speculation that they were prompted by friendship with the defendants or animus towards complainant do not constitute evidence of misconduct.

Complainant's allegation that the judge was required to recuse himself upon entry of an appearance by an attorney who taught at the law school where the judge also taught fails to suggest misconduct because such a relationship does not give rise to a reasonable question regarding the judge's impartiality. 28 U.S.C. § 455(a). Complainant's claim regarding delayed service of orders fails to raise an issue of judicial conduct. Service of orders is the function of the clerk or court rather than the judge. Fed. R. Civ. P. 77(d)(1).

There appearing no basis for a finding of judicial misconduct, this complaint is dismissed as directly related to the merits of the judge's decisions and as lacking in evidence of judicial misconduct. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge