

in 1994 alleging improprieties by the Marshals Service and the U.S. Attorney's Office.

In 2016, an unrelated civil action filed by complainant under the Americans with Disabilities Act and the Rehabilitation Act was assigned to the subject judge. After the subject judge granted defendants' motion for summary judgment, complainant filed a motion to disqualify the judge asserting, as he does here, that the judge found for the defendants based on lingering malice arising out of complainant's 1984 failure to cooperate and 1994 lawsuit. The subject judge denied the motion to disqualify. Complainant's appeal in the case is currently pending in the court of appeals.

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). 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 the result of improper motive or conduct, but the claim must be supported by sufficient evidence to raise an

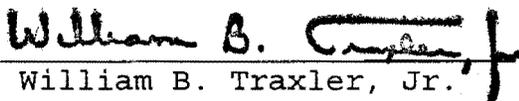
inference that misconduct has occurred and cannot be based on mere speculation. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such a showing cannot be made where the only support for the allegations is the merits of the judge's ruling. In re Doe, 640 F.3d 869, 873 (8th Cir. 2011).

Complainant contends that the judge's decision was the result of lingering bias rather than the judge's application of the law to the facts of his case. He points to the judge's involvement as United States Attorney in a case in which complainant refused to give testimony and to his own subsequent lawsuit alleging improprieties by the judge and the Marshals Service. The judge's impartiality cannot, however, reasonably be questioned on the basis of his alleged involvement in an unrelated criminal case over 30 years ago or in an unrelated civil action over 20 years ago. See 28 U.S.C. § 455(b)(3) (disqualification based on prior governmental service is required only if service concerned the same proceeding); Canon 3(C)(1)(e), Code of Conduct for United States Judges (same); Advisory Opinion No. 103 (Jud. Conf. Comm. on Codes of Conduct (June 2009) ("A judge is not automatically disqualified from participating in other, unrelated cases involving the same litigant, whether they are filed before or after the complaint in which the judge is a defendant.")).

Complainant has, in this case, failed to present facts giving rise to an inference that the judge's rulings were motivated by bias, misconduct, or intentional departure from prevailing law. Complainant's disagreement with the judge's rulings must be pursued on appeal rather than through a misconduct complaint.

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

IT IS SO ORDERED.



William B. Traxler, Jr.
Chief Judge