

the date of his order in which to effect service and issued new summonses. The case remains pending in district court.

Complainant filed this judicial complaint alleging that the district judge is conspiring with defendants' attorneys to dismiss her case, just as he conspired with defense counsel to dismiss her prior case. She makes the following allegations in support of her conspiracy claim:

- government attorneys deleted from her computer a supplemental statement she planned to file in support of her motion for extension, thereby ensuring the judge would not give her adequate time to effect service;
- government attorneys created a message on her computer stating that an order was issued dismissing her claims;
- government attorneys have been unrelenting in creating messages on her computer telling her to file her claims in state court;
- the judge's reference to a 90-day service period was a reference to the service period in state court, supporting the government attorneys' messages telling her to file in state court;
- the extension allowed by the judge to effect service was too short to permit her to make service;
- in complainant's prior case, the judge allowed a similarly short extension of time to effect service and then changed the record to make it appear that complainant's declaration of service was two days late;
- the judge dismissed complainant's prior case based on ex parte communication and prior agreement with defense counsel;
- the judge made certain that complainant could not file an amended complaint in her prior case by denying her motion

for extension of time after the time for filing an amended complaint had expired;

- government attorneys removed all printer applications from her computer while she was typing her judicial complaint, preventing her from using her home printer so that she would abandon her efforts to file the complaint.

The Judicial Conduct and Disability Act provides a means to review claims relating to a judge's conduct; it does not permit review of conduct by other officials. 28 U.S.C. § 351(d); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Act also does not permit review of a judge's decisions; allegations that are "directly related to the merits of a decision or procedural ruling" are subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(ii).

Misconduct may be based upon a showing that the judge's ruling was the product of bias or conspiracy, 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 Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (judicial complaint process may not be used to pursue speculative claims). If "the only support for the allegation of bad acts or motive is the merits of the judge's ruling," the complaint must be dismissed. In re Complaint of Doe, 640 F.3d 869, 873 (8th Cir. Jud. Council 2011).

Complainant has set forth no facts from which any judicial involvement can be inferred in government counsel's alleged deletion of documents and applications from complainant's computer or insertion of messages onto her computer. The judge's reference to the federal court service period of 90 days was not evidence of judicial support for the alleged messages on complainant's computer encouraging her to file in state court.

Complainant's allegation that the judge changed the record in her prior case to reflect that her declaration of service was filed two days late also fails to support her claim of judicial misconduct. Complainant's declaration of service in the prior case was hand-stamped with a filing date two days earlier than the electronic date assigned when the declaration was docketed. It is the function of the clerk of court, not the judge, to enter documents and maintain the case record. Fed. R. Civ. P. 79(a). The two-day discrepancy between the date the clerk hand-stamped the declaration and the date assigned when the declaration was docketed is irrelevant to a claim of judicial misconduct. In addition, the discrepancy had no effect on the judge's disposition of the case.

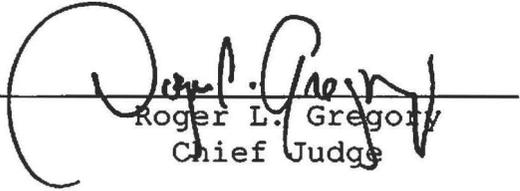
Complainant's allegations that the judge's dismissal and denial of her motion to amend in her prior case were the result of ex parte communication and prior agreement also lack evidentiary support. The judge's final order fully analyzes

complainant's claims and fully explains the reasons for his decision. The judge's denial of complainant's motion to amend her complaint was based on the merits of her proposed claims, not on the date on which the amended complaint was submitted. Complainant has failed to offer any facts from which it can be inferred that the judge engaged in ex parte communication or entered into prior agreements with defense counsel.

Complainant's allegation that the short extension granted by the judge for service in her current case is evidence of bias or conspiracy also fails. Complainant's contentions that she should have been allowed more time are directly related to the merits of the judge's ruling. A showing of misconduct cannot be based on complainant's disagreement with the judge's ruling.

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

IT IS SO ORDERED.


Roger L. Gregory
Chief Judge